JUDICIAL COUNCIL OF CALIFORNIA • ADMINISTRATIVE OFFICE OF THE COURTS

Center for Families, Children & the Courts

Update

Working Together for Families and Children

JUDICIAL COUNCIL OF CALIFORNIA • ADMINISTRATIVE OFFICE OF THE COURTS • AUGUST 2001 • VOLUME 2, NUMBER 2

Communities Take Action to Adopt Restorative Justice Principles

SONOMA COUNTY COMMUNITY FORUM

Judge Arnold D. Rosenfield,
Superior Court of Sonoma County

On June 5, 2001, the Sonoma County Superior Court and Probation Department sponsored a community forum on restorative justice held in Santa Rosa. The meeting was attended by about 160 people who are involved in various aspects of the juvenile justice system in Sonoma, Mendocino, Alameda, and Marin Counties.

Funding for sponsorship was obtained through the Sonoma Community Foundation and various local sources as well as the Administrative Office of the Courts, which had granted Sonoma County a court improvement mini-grant in 1999. Funding left over from that grant was used in this court improvement forum.

The agenda attempted to give an overview of restorative justice and to present practical applications and a working model. The keynote address by Howard Zehr, who has authored various books on restorative justice, provided an overview. Although the concept of restorative justice has been in existence for quite a while, Mr. Zehr has been able to enhance the idea and make it more visible.

His book *Changing Lenses: A New Focus for Crime and Justice* is the seminal work in the field. Mr. Zehr urges looking at the issue of criminal justice by asking the interested parties to examine crime as an injury to a victim and to the community. Crime is dealt with by asking the following three questions: What harm was caused? How can it be repaired? Who should be responsible for the repair?

The concept of restorative justice focuses on making the victim and/or the community as whole as possible as long as public safety can be protected. Included in the concept is the community's responsibility to both support the victim and help the offender become a productive, welcomed member of the community if the offender "makes it right" with the victim.

Continued on page 2

COMMUNITY JUSTICE IN MARIN COUNTY

Mr. Joseph Spaeth,
Marin County Public Defender

Community justice got a jumpstart in Marin County on Saturday morning, June 9, 2001. Over 75 interested citizens and government workers spent the morning listening to Dennis Maloney, Director of the Department of Juvenile Community Justice in Deschutes County, Oregon, and Judge Thomas C. Edwards of the Superior Court of Santa Clara County. They talked about programs they have initiated in

Continued on page 2

IN THIS ISSUE

Sonoma County Community Forum
Continued from page 1

Dennis Maloney, Director of the Department of Juvenile Community Justice in Deschutes County (Bend), Oregon, also spoke at the forum. He highlighted the pitfalls he has encountered and the lessons he has learned during the many years he has worked to transform the Probation Department in his county to a community justice or restorative model. These efforts have helped Mr. Maloney become a nationwide expert on the topic of restorative justice.

Allen MacCrae, the Chief Youth Justice Coordinator for the courts in Wellington, New Zealand, also addressed the audience about the use of family group conferencing in his jurisdiction. He explained that he is one of the four coordinators/facilitators who get involved in every case that does not allege a voluntary manslaughter or murder. His office arranges and conducts a family group conference by contacting each victim and family and each offender and family prior to the conference to discuss how it will be conducted. Then a meeting is held with both families, including extended family members, law enforcement, and any support people for the offender in order to come up with a plan on how the offender will "make it right" with both the victim and the community. The plan is then presented to the court for approval. If the court does not approve the plan or if no plan is worked out, the case goes to a formal court process. The plan can include incarceration if that is what is agreed upon. During the past six months, there have been no contested hearings in the Juvenile Court in Wellington, a jurisdiction of 165,00 people.

The forum's final presentation was by a panel of representatives from restorative justice–type programs in Sonoma County. This includes a report on the soon-to-be-utilized family group conferencing program in Sonoma County.

The Sonoma County District Attorney's Office provided lunches and snacks catered by the Culinary Arts Program at the Sonoma County Probation Camp. Local press coverage was arranged both prior to and immediately after the event.

The publicity served one of the goals of the forum, which was to introduce the concept and educate the community on what is meant by restorative justice—that it is an idea and not a program. The second goal of the forum was to enlist support for a plan by the Juvenile Court and Probation Department to have restorative justice take hold as a guiding premise in the local juvenile justice system. The plan took shape and was approved during the statewide AOC-sponsored Juvenile Delinquency and the Courts conference held in San Diego in January.

In furtherance of the second goal, each forum attendee was asked to complete an evaluation form that contained a solicitation of interest and asked the attendee how he or she might want to become involved. In addition, each attendee received some brief explanatory materials regarding restorative justice ideas, a listing of Web sites where more restorative justice information can be obtained, and information concerning the concept of getting the community involved in the juvenile justice process.

The forum's event planning committee will begin to organize a steering committee and subcommittee of interested persons to foster existing restorative justice programs and to brainstorm ways to get both the immediate stakeholders and the community involved in making restorative justice an ongoing process in Sonoma County.

Please direct any questions or comments to Judge Arnold Rosenfield c/o the Juvenile Court in Sonoma County.

Community Justice in Marin County
Continued from page 1

their respective communities based on restorative justice principles.

Mr. Maloney spoke broadly about the Balanced Approach to Restorative Justice (BARJ) and the importance of including *community* in the concept. Using a list of 10 principles that he has learned from his experience, he outlined the framework for programs that form the nucleus of his community justice approach in Bend, Oregon.

Judge Edwards described the formation and operation of the Neighborhood Accountability Boards (NAB) that are currently functioning in Santa Clara County and the restorative justice construct within which they flourish. There are seven boards, using about 200 community volunteers, with more planned.

Following the two featured speakers, a panel of local leaders in the criminal justice, law enforcement, education, and health and human services fields led a facilitated audience/panel discussion about what steps can be taken in Marin to foster a community justice approach using the restorative justice lens.

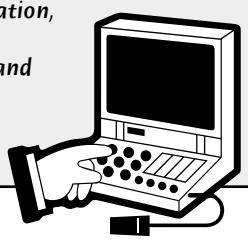
All participants left with a heightened understanding of community justice and an enthusiastic commitment to initiate change in Marin County.

CFCC LAUNCHES NEW WEB SITE

CFCC is proud to announce its new Web address:

www.courtinfo.ca.gov/programs/cfcc

Please explore this site for information and resources related to family, juvenile, child support, custody, visitation, and domestic violence law and procedure.



Santa Clara County Court Receives National Honor for Juvenile Dependency Dispute Resolution Strategies

Mr. Steve Baron, Assistant Director, Supervisor of Dependency Mediation, Santa Clara County Family Court Services

On March 29 and 30, 2001, the Dave Thomas Center for Adoption Law at Capital University Law School in Columbus, Ohio, recognized as "Adoption MVPs" six jurisdictions around the country that have "eloquently reminded us all that we can change the status quo —that we can fix systems that are broken and can make systems that are working well work even better. Through hard work and innovation they have improved their permanency placement systems and provided us all with inspiration to dig in and do more for the kids." The Superior Court of Santa Clara County received one of those six awards for being "a national leader in … mediation [Dependency Mediation], family group conferencing and the use of other dispute resolution strategies to resolve more quickly and less contentiously the full range of matters impacting kids in the child welfare legal system." The court was recognized for its leadership in the use of alternative dispute resolution techniques in permanency placement proceedings. The adoption law center's executive director, Professor Kent Markus, described Santa Clara's Dependency Mediation Program as "pioneering," and "among the best in the country," adding that their "work reflects the court's commitment to ensuring an efficient resolution to any adoption-related disputes."

At the direction of Leonard P. Edwards, Supervising Judge of the Santa Clara County Juvenile Dependency Court, Dependency Mediation staff Steve Baron and Brendan Cunning, from Family Court Services, traveled to Ohio to receive the award on the behalf of the court and to make a presentation on dependency mediation to several hundred professionals from court systems as well as adoption, child protection, and community agencies from 35 states.

Program developer and supervisor Steve Baron emphasized that the success of the program was due not only to the leadership and support of the Juvenile Dependency Court, its bench officers, and various system participants, but also to the extraordinary skill and dedication of the current and former Dependency Mediation staff from Family Court Services. The current dependency mediators are Brendan Cunning and Susan Sommer, who are supported by mediators Mary Lou Hipolito and Raphael Renta, who, in turn, provide assistance in monolingual Spanish-speaking cases. Former dependency mediators include Jean O'Brien, Anne Kutilek, and Jack Weitzman.

The Santa Clara Dependency Mediation Program commenced operation in 1993 under a legislatively authorized pilot program and with support and assistance from existing dependency mediation programs in Los Angeles and Orange Counties. Since that time the program has provided training and assistance to developing dependency mediation programs around the state and, under the auspices of the National Council of Juvenile and Family Court Judges, to court systems around the country. The program's brochure defines dependency mediation as "a confidential process in which specially trained neutral mediators help the family, social worker, attorneys, and other people in a case talk about and work out the problems sent to mediation. The goal is to come up with a plan which everyone agrees is safe and best for the children, and safe for all the involved adults." Any and all issues related to jurisdiction and disposition may be referred to mediation. The Center for Policy Research in its 1995 *Report to the California Legislature on Dependency Mediation* found that "[m]ediation is preferred by parents and most professional participants [and] is effective with all types of maltreatment at all stages in case processing …. Most mediations do result in agreements [that are] more likely than other agreements to … address communication problems between family members or between the family and CPS agency …. Cases mediated, rather than adjudicated, at jurisdiction and disposition are less likely to result in subsequent contested review hearings …. There is also some evidence that mediated agreements enjoy better compliance by parents …."

The Dave Thomas Center for Adoption Law, which presented the award to Santa Clara, was formed in 1998 for the purpose of effecting systemic change in the area of adoption. There is no other institution in the country focused exclusively on solving adoption and adoption-related legal problems. Seed money for the center was provided in a three-year grant from the Dave Thomas Foundation for Adoption. (Dave Thomas, the founder of Wendy's International, the fast food restaurants, was adopted as a child and has become America's leading spokesperson for the adoption cause.) The center is now working to establish financial self-sustainability through gifts, grants, and fees earned for services provided.

Steve Baron, Assistant Director, Supervisor of Dependency Mediation, Santa Clara County Family Court Services, is on the faculty of the National Council of Juvenile and Family Court Judges on the subject of dependency mediation and assisted in the development of section 24.6 of the California Standards of Judicial Administration, Uniform Standards of Practice for court-connected child protection/dependency mediation.

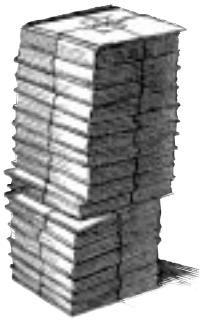
The Changing Role of Law Librarians

Ms. Annette Heath,
Kern County Law Library

In the 10 years that I have been with the Kern County Law Library, I have seen a change in the patrons we serve. The majority of our patrons used to be attorneys. Today half of our patrons are nonattorneys, many researching information on cases in which they are representing themselves. But it is not just the number of these patrons that has changed, but the patrons themselves. The pro per litigants we see in the law library are not the same as those we saw 10 years ago and certainly not the same as those we will see in the year 2005. Today some of the pro pers we see have chosen to represent themselves for a variety of reasons, not just those related to economics. As noted by Bob James, the director of the self-help center in Maricopa County, Arizona, in his speech at the July 2000 annual meeting of the American Association of Law Librarians (AALL), it seems as though the more educated and technology-oriented society becomes, the more people tend to want to do things themselves. To this end, in the library, our level of service and attitude has had to change.

When I first arrived at the law library, we were not allowed to assist patrons beyond showing them where a particular book was located on the shelf. Today we take the time to actually show them the particular volumes (of multivolume sets) and chapters within the books that pertain to their topic. We help them understand what they are reading by explaining, not interpreting, what the citation is and how they can use the citation to find what they are looking for. Because each index is a little different—some refer to pages, others to sections—that can confuse patrons; so we explain how to understand the particular index they are looking at. We explain how to use the footnotes in publications such as *California Jurisprudence,* what the pocket parts are in the back of the codes. We carry a large number of self-help books from publishers like Nolo, which we readily show to people.

Outreach is also part of our efforts to change. Currently the Council of California County Law Librarians is working hard to dispel the belief that law libraries are only for attorneys and judges. In line with this endeavor, many counties, such as San Diego, Contra Costa, and Sacramento, have added the word "Public" to their names. The council itself received a grant through the federal Library Services and Technology Act (LSTA) program, administered in California by the State Librarian. This was used to hire a consultant who conducted surveys and focus groups throughout the state to determine how law libraries are perceived and what services each library offers, as well as to inform others of the services we can provide.



When I began preparing these remarks, I thought: What do I want to say? What are the problems I see every day? Then I listened to the tape from the AALL annual meeting, and I heard speaker after speaker mention the same problems. Problems stemming from the fact that, in the libraries, we see people every day who are upset and angry. Usually by the time they get to us they have been to court, are in the process of going to court, or have been wronged in some way and want justice. Normally they are not in court for a happy reason. In fact, as Bob James pointed out at the AALL meeting, these people are going to court, where a person in a black robe is going to make some important decisions that will affect their lives, some in more ways than others.

I have been fortunate thus far never to have been involved in a court proceeding, but I can understand the helpless feeling that pro pers often experience. My father was just diagnosed with lung cancer, and today he is undergoing yet another test—his third in as many days—before the doctors will decide what they are going to do. I see his frustration, his feelings of not having any control. I think if we stop to think about it, each of us can remember a situation where we felt helpless and not in control. This is what unrepresented litigants are feeling when they come to the clerk's counter or to the law library. To add to their frustration, self-represented litigants are entering not just a courthouse or a library, but a different culture, a culture where the normal language they speak is replaced with legal jargon. I have had several people say to me, "This is like a foreign language; I'm totally lost." Then they have to fill out or type forms that have to be in a certain format. Sometimes they don't type, or the sample doesn't exactly fit their situation. Yet when they ask questions, they get to hear those famous words "I can't give legal advice." But what exactly is legal advice? No one ever seems to have the same answer.

I had one patron come to me totally frustrated. He had been to the clerk's office and had been told his form was not formatted correctly and that he should look at rule 201 of the California Rules of Court. I looked at the form and saw that it was a Judicial Council summons form. I asked him three times, "Is this the form that they say is not formatted right?" He continued to answer yes. But I kept thinking, "This is a Judicial Council form; how can it not be formatted correctly?" I then happened to turn the form over and see that the back of the form was missing. We then looked through his forms and found the back of the summons printed on a separate piece of paper. I explained that

Continued on page 5

The Changing Role of Law Librarians
Continued from page 4

perhaps the clerk did not see this part of the form because the summons is normally printed on both sides of one sheet. I then proceeded to copy the form onto the front and back of one sheet and told him to go back to the clerk's office and try to talk to someone else to see if this was, in fact, the problem. Guess what? It was. He came back to thank me and to make appropriate copies of the rest of his forms. For the clerk to have explained this to him would not, in my opinion, have been giving legal advice.

In his articles, John Greacen, Director of the New Mexico Administrative Office of the Courts, points out that questions that begin with "can I" or "how do I" are normally procedural questions. In order to help those who must or choose to represent themselves, we need to answer procedural questions. These include: Can I serve this myself? How many days do I have to wait to file a default? How many copies do I need? I was speaking to our family law supervisory clerk, and she mentioned that the clerks know, for example, what needs to be filled out on a form for it to be accepted, and that, in her judgment, telling someone which portion they need to fill out is not the same as giving them legal advice. But telling them *what to write* on the form is legal advice.

As I mentioned earlier, our practices in the law library have changed. In response to the frustration we see our patrons experiencing, we have changed the library philosophy from "we can't help you" to "we can get you started in your research." If a patron comes in knowing what type of action they want to take, we refer them to a code section on it. If, for example, they want information on family support, trusts, or drafting legal forms such as leases or bylaws for corporations, we refer them to the books that will help them. We explain that the forms they are looking at are a general format and that they need to adjust each form to fit their particular situation. If it is a Judicial Council form, then we tell them where to pick it up. This usually calms down even the most frustrated patron. Even so, you are always going to get those who want an instant answer and who do not want to take the time to read, but at least they will not feel they have gotten the runaround.

Many times we make copies for pro pers from the form book or from the California Courts Web site *(www.courtinfo.ca.gov/forms)*. And so I would suggest that if you know patrons are stressed and that trying to figure out the copy machine will just add to that, make the copies for them or at least show them how to use the machine. Sometimes doing nothing but listening to someone vent for 15 minutes will get a response of "thank you, you were a big help." I know this isn't always possible at the clerk's counter, but it is possible to at least acknowledge someone's frustration, not add to it.

One thing that seems to add to patrons' feelings of frustration is a blind referral. To avoid this, make sure that staff understand what the different agencies in the community have to offer. What can the legal aid office do? What does the law library offer? What does the family law facilitator provide? And as for law librarians, they should be able to explain things like where the different court division counters are located and what litigants can expect to get there. How do they look up a local case? What information do they need to give the clerk in order to be able to review a file? What are the court's hours? Are they closed during lunch?

Keep a referral list with phone numbers at the counter and keep the information current. Make contacts in the different court or agency departments; let people know who you are and what your department can do to help. This way you have a contact person to ask if something has recently changed or to get quick answers. If I send a person to you, can you help or will you direct them somewhere else. Cooperation saves the self-represented litigant the frustration

Continued on page 6

Editor's Note

WELCOME

to the August 2001 Issue of
Update,
the Center for Families, Children & the Courts (CFCC) newsletter. The newsletter focuses on court and court-related issues involving children, youth, and families. We hope you find this issue informative and stimulating. As always, we wish to hear from you. Please feel free to contact CFCC about the events and issues that interest you.

We invite your queries, comments, articles, and news.

Direct correspondence to
Beth Kassiola, editor,
at the e-mail address below.

Center for Families, Children & the Courts
Update
is a publication of the Judicial Council of California, Administrative Office of the Courts, 455 Golden Gate Avenue, San Francisco, CA 94102-3660.
Phone: 415-865-7739
E-mail: cfcc@jud.ca.gov

PLEASE VISIT OUR WEB SITE AT
www.courtinfo.ca.gov/programs/cfcc

The Changing Role of Law Librarians
Continued from page 5

of being directed from department to department. Maricopa County in Arizona has monthly meetings of representatives from the different departments in order to coordinate their efforts.

Attitude! An important issue. The first impression many people get of the court system begins at the clerk's office and sometimes in the law library. For them, "the government" or "government employee" may already conjure up bad feelings. You do not want to be perceived as just another employee who won't help or who is keeping them from accessing the courts.

A smile can make all the difference in the world. My mother has this philosophy that you can say just about anything to anybody if you say it in the right way. You could probably get away with saying "I can't give legal advice" if you were to say it in the right way. Put yourself in the patrons' shoes. Would you rather someone say "I can't tell you that" and walk away or have them say "I understand your frustration, but what you are asking is beyond my knowledge"? The latter is what we say when people do ask us for direct legal advice. And believe me, they try every way possible to ask the same question.

Have written policies on customer etiquette. I have heard this mentioned over and over. Make sure staff review these policies. You can have the best customer etiquette policy on paper, but if nobody reads it, it is just a waste of paper. I am fortunate to have a staff of only three, and the least amount of time any of them has been at the law library is seven years. So our policy is unwritten. But when each staff member was trained, they learned that our job is to assist people, not just the attorneys, but every patron. We are also fortunate enough to be able to vent our own frustrations among ourselves daily. But I know in larger libraries and in the clerks' offices, staff changes are constant. So continuous training is important. Even for those who have been working for a while, it is nice to have an occasional refresher course on exactly how we should treat those who come to us for help.

Be mindful that some people are not able to deal with the public and, to the extent that you can, place people at the counter or reference desk who are people-oriented. Nevertheless, even for those with the best people skills, there are going to be days when you just do not want to answer another question or you just cannot deal with that patron who comes in every week wanting something different. When you feel this way, please do not take it out on the patron. They do not know they are the hundredth person to ask you that exact same question. When they are gone, then you can vent to a co-worker or just go into another room and let off steam.

Find out what quality of service you are providing. In Kern County we conduct semiannual surveys of our patrons for this purpose. These include questions such as: Did you find what you were looking for? Was the staff courteous? Knowledgeable? What brings you to the law library? In fact, this survey is a standard survey that is conducted by law libraries throughout California. One of our county law librarians, Marilyn Josi of Sonoma County, tallies the statewide results and sends out a report. In the Kern County library, we tally our own results and are always anxious to see what comments are made. This gives a good overview of whether or not we are meeting the needs of the citizens.

So what are those things considered out of bounds? John Greacen gives us some guidance by pointing out some "don'ts," such as: Answering questions you don't know the answer to. If you don't know, don't give an educated guess. Refer people to someone else or ask them to wait a moment to let you see if your supervisor knows the answer. For questions that cannot be answered at the clerk's office, refer people to the law library. We have books they can read to give them at least a better understanding of their problem.

Do not answer questions about legal strategy, such as: What is the best way for me to proceed? Do I file for divorce, nullity, or legal separation? What type of bankruptcy do I file for? How much money should I ask for? What would you do if you were me? How do you interpret this code section? The list of potential questions goes on and on. Invariably, there are those who will persist and ask the same question in five different ways or who will ask another staff member, hoping to get an answer more to their liking.

Do not take sides. John Greacen, in his article in the January–February 2001 issue of *Judicature,* states that "[t]he limitations on the court staff in answering questions from the public arise not from what lawyers do, but from the principle of impartiality central to public trust and confidence in the courts. Court staff should not advise a person accused of committing a crime whether to plead guilty—not because lawyers give such advice, but because that advice causes the court staff, and hence the court itself, to be taking sides in the outcome of the case."

This holds true in that, in assisting patrons, you should never tell one party something that you would not tell the other party. It is our role to remain impartial and to keep our personal convictions to ourselves. We are not to judge others but to help them in accessing the judicial system whether we believe they are wrong or right. The more we think about the court system as a business and become concerned with providing neutrally delivered customer service, the more likely we will be able to assist the self-represented litigants, who have come to represent such a significant portion of our patrons.

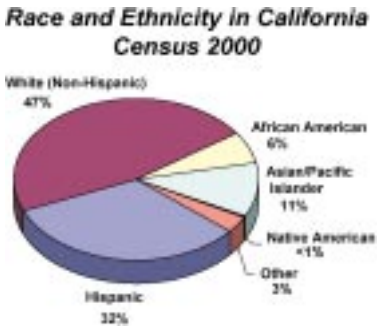
This article was derived from Annette Heath's presentations at the Judicial Council's Assisting Self-Represented Litigants in California Conferences in Visalia on March 15th and in Costa Mesa on April 26th. The workshop was entitled "The Changing Role of Court Clerks and Law Librarians."

Custody Mediation and Diversity in California

Mr. Don Will, CFCC Senior Research Analyst

"All Californians will have equal access to the courts and equal ability to participate in court proceedings, and will be treated in a fair and just manner. Members of the judicial branch community will reflect the rich diversity of the state's residents." (Goal I, Judicial Council's Long-Range Strategic Plan.)

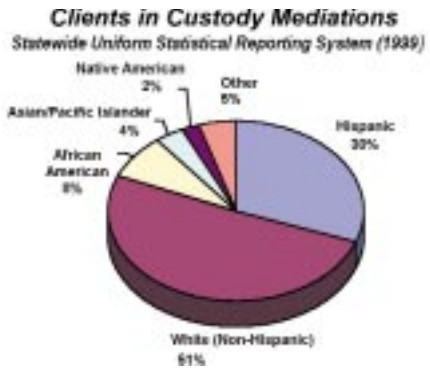
The racial and ethnic profile of parents in court-based child custody mediation changed greatly in the 1990s. How will family and juvenile courts in California respond to the increasing ethnic diversity of the state? Family and juvenile courts around the state are adapting their programs to a client population more likely to be self-represented, foreign born, in need of interpreters, and from a cultural background very different from that of the judicial officer or mediator who works with them.



HISPANIC[1] AND ASIAN POPULATIONS INCREASE, 1990–2000

According to the 2000 U.S. Census:

- Counties experiencing the greatest growth in Hispanic population were concentrated in the Central Valley; the Inland Empire of San Bernardino, Imperial, and Riverside Counties; and the Sacramento Valley.
- The Hispanic population rose by three million to compose one-third of the state's population.
- The Asian population rose by one million to compose one-tenth of the state's population.
- The White (non-Hispanic) population dropped to less than one-half of the state's population.



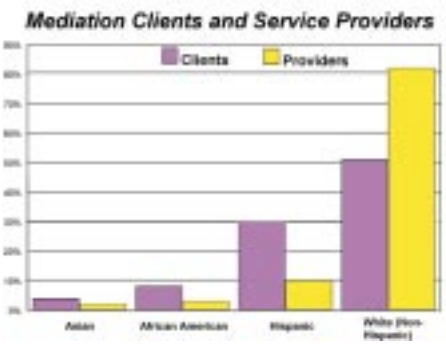
CLIENT POPULATION IN CUSTODY MEDIATION MORE DIVERSE

According to the Statewide Uniform Statistical Reporting System (SUSRS) studies of court-based child custody mediations in California, from 1991 to 1999:

- The number of Hispanic parents in child custody mediation increased by 67 percent (two-thirds).
- The number of Asian parents also increased by 67 percent.
- The number of White (non-Hispanic) parents dropped by 10 percent.
- The number of custody mediations grew faster than the overall population, with the greatest increase occurring in the Central Valley.

ETHNIC DIVERSITY INCREASES IN CALIFORNIA

- Non-Hispanic Whites are still the largest racial/ethnic group in the state, but at 47 percent of the population they no longer constitute a majority.



- Cities and counties are increasing in ethnic *diversity*, that is, in the mixture of racial and ethnic groups living in a given area.
- Six of the 10 most ethnically diverse cities in the nation are in California: Long Beach, Oakland, Los Angeles, Sacramento, Fresno, and San Jose.

CLIENT POPULATION MORE DIVERSE THAN SERVICE PROVIDERS

- Eighty percent of custody mediators identify themselves as non-Hispanic White, while one-half of mediation clients are people of color.

ONE-QUARTER OF ALL STATE RESIDENTS FOREIGN BORN

- Two-thirds of Asian residents are foreign born.
- Forty percent of residents of Mexican origin are foreign born.
- Thirty percent of all adults speak a language other than English at home.
- Twenty percent of all adults speak Spanish at home.

BARRIERS TO SERVING FOREIGN-BORN PARENTS IN CUSTODY MEDIATION

- Many custody mediation programs do not have access to interpreters.
- Programs have difficulty recruiting bilingual/bicultural mediators.
- Research is needed to determine whether foreign-born parents are using court-based custody mediation and other family court services.

Continued on page 8

1. While recognizing that "Latino" is a term preferred by many Californians, this report uses the term "Hispanic" for the population self-identified as "Latino" or "Hispanic," in order to be consistent with state and federal data sources that use the term "Hispanic" exclusively.

Custody Mediation and Diversity
Continued from page 7

NON-HISPANIC WHITE POPULATION OLDER THAN ASIAN, AFRICAN-AMERICAN, OR HISPANIC POPULATIONS

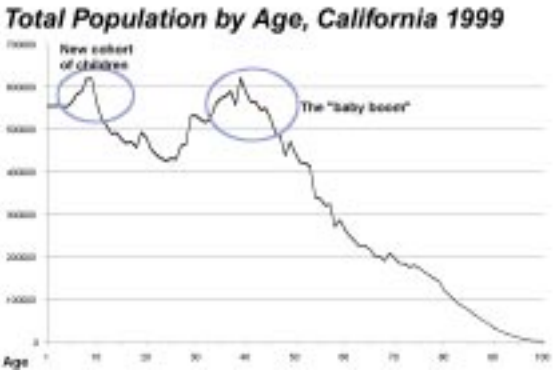
■ Non-Hispanic Whites make up 47 percent of the total population, but only 35 percent of children under 18 years of age.
■ Forty-four percent of children under 18 years of age are Hispanic.
■ The total population of young adults (18 to 29 years of age) dropped in the 1990s, but will begin to rise in the current decade.

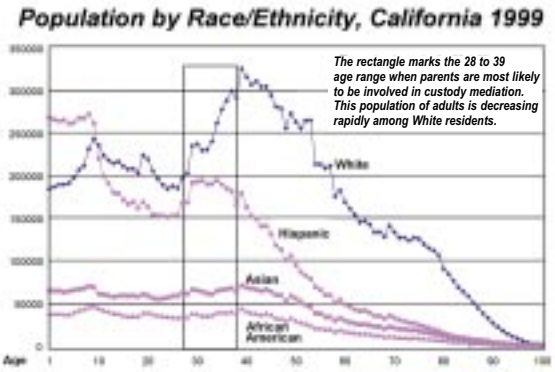
AGE OF POPULATION AFFECTS CUSTODY MEDIATION CASELOADS

■ Most parents in custody mediation are between the ages of 28 and 39. The number of White (non-Hispanic) adults in this age group dropped during the 1990s, while the number of Hispanic, Asian, and African-American adults in this age group rose and remains relatively constant.
■ The total number of adults in the key age range of 28 to 39 years old is projected to decrease during the first half of the current decade. However, the number is projected to level off and begin rising in the second half of the decade, when a large cohort moves into their late 20s.

CONCLUSION: SERVING THE ETHNICALLY DIVERSE POPULATION

Family and juvenile courts face a number of challenges in serving California's ethnically diverse population. The number of adults in their late 20s is projected to begin rising by the middle of this decade, bringing more parents into custody mediation. These parents will be increasingly diverse, more likely to be self-represented, and more likely to need assistance with language. The Center for Families, Children & the Courts (CFCC) invited family court professionals to name some of the challenges





posed by an increasingly diverse population:
■ Recruiting child custody mediators and other court professionals who are bilingual and bicultural;
■ Finding ways to do outreach to many different ethnic communities;
■ Providing interpreters in custody mediation;
■ Providing orientation and other materials that are in the clients' language and that address specific cultural concerns; and
■ Understanding issues that immigrants face in coming to court.

ADDITIONAL RESEARCH PLANNED

Very little research on serving the ethnically diverse population in California's family and juvenile courts is available. "Responding to Cultural Diversity in California's Family and Juvenile Courts: Literature Review and Needs Assessment" is a research grant recently awarded by CFCC to Fernando I. Soriano, Ph.D., Associate Professor of Human Development and Director of the National Latino Research Center at the California State University at San Marcos. The literature review and needs assessment are designed to help court professionals and judicial officers understand the family and juvenile court experiences and needs of the ethnically diverse population.

Sources

The Statewide Uniform Statistical Reporting System (SUSRS) is the first large-scale statewide survey of all court-based mediation sessions in the State of California. Conducted by CFCC, the SUSRS consists of a network of discrete but interlocking studies that provide a statistical database consisting of representative and longitudinal data from nine data collections involving over 18,000 child custody cases. Information is collected on the services family courts provide, the issues and outcomes of court-based child custody and visitation mediation, and the demographics of families and children who use custody mediation. We also ask how parents feel about the mediation sessions and the decisions that are made. The statewide approach and the use of a two-week time period has allowed a representative sample of all California mediation sessions taking place in each survey year: 1991, 1993, 1996, and 1999. Reports based on the SUSRS are available at:

www.courtinfo.ca.gov/programs/cfcc/resources/research_articles.html.

Census 2000 data is available at *www.census.gov.* This report uses table DP-1, Profile of General Demographic Characteristics: 2000 and 1990; Census 2000 PHC-T-1, Population by Race and Hispanic or Latino Origin for the United States, 1990 and 2000; and 1990 Public Use Microdata Sample, U.S. Bureau of the Census. Detailed age population data was taken from State of California, Department of Finance, Race/Ethnic Population with Age and Sex Detail, 1970–2040, December 1998. This is available at *www.dof.ca.gov/html/demograp/race.htm.*

On Assignment in Dependency Court

CONVERSATION WITH JUSTICE RICHARD D. HUFFMAN

Reprinted with permission from Court News *(May–June 2001).*

Appellate justices are the ultimate generalists, according to Justice Richard D. Huffman, Court of Appeal, Fourth Appellate District. However, in recent months, Justice Huffman has worked as a judicial specialist, volunteering for a special assignment in juvenile dependency court.

From the last week in February until his assignment ended the first week in May, Justice Huffman served as a trial court judge in the juvenile dependency court in the Meadowlark facility of the Superior Court of San Diego County. This facility houses the county's principal juvenile courts, which consist of three dependency courts and a series of delinquency courts.

For someone who originally intended to become a business litigator, Justice Huffman is no stranger to the criminal justice system. After graduating with a law degree from the University of Southern California in 1965, he joined the California Department of Justice as a deputy attorney general (1966–1971). From there, he took a position with the San Diego District Attorney's Office, serving as chief deputy district attorney from 1971 to 1981 and as assistant district attorney from 1981 to 1985.

Justice Huffman has shared his experience and expertise in criminal law with others in the legal system. He teaches courses in criminal law and procedure and mental defenses as an adjunct professor at the University of San Diego and is the former director of the university's Center for Criminal Justice Policy and Management. He is a fellow of the American College of Trial Lawyers and is an honorary diplomate of the American Board of Trial Advocates.

Justice Huffman began his career on the bench of the Superior Court of San Diego County in 1985 and in 1988 was elevated to the Court of Appeal, Fourth Appellate District. In 1996, Chief Justice Ronald M. George appointed him to the Judicial Council, where he serves as chair of the Executive and Planning Committee.

Court News *spoke with Justice Huffman regarding his assignment in San Diego County's juvenile dependency court.*

Tell us how you came to the assignment in the San Diego County juvenile dependency court.

I chose this assignment for several reasons. First, since I've been on the Court of Appeal, I've been working in the trial courts for some period of time virtually each year. So, this is part of my annual "return to reality" in the trial courts. Second, our court has a substantial caseload of dependency work on appeal. Division One of the Court of Appeal, Fourth District, has a fast-track program for resolving juvenile dependency appeals. Since the appellate court is committed to this process, I felt I should see the dependency court firsthand and get a feel for how it operates. Third, it is important for me to experience this operation as a member of the Judicial Council. The council has been concerned about the lack of adequate resources for family and juvenile courts. Finally, I think this is one of the most important areas of the court system. Family and juvenile court is a place to which we should be willing to dedicate time and resources.

Are assignments like this standard for appellate justices? What are the advantages to taking these kinds of temporary positions?

As far as I know, there are only a few appellate justices who take assignments in the trial courts with any regularity. The principal advantage is that you are able to see the actual operation of the trial court system. At the appellate court level, we only get exposed to certain portions of the case and do not receive its full context. In addition, by taking local court assignments, appellate justices gain a healthy perspective on the challenges faced by trial judges when making decisions on the exercise of discretion and evidentiary rulings.

What is your overall impression of the juvenile dependency court in San Diego County?

I have been impressed by the way court officers are managing the difficult conditions and tremendous workload. Judges and referees are heavily burdened with a continuing line of cases. Attorneys usually have far more cases than probably is reasonable to handle.

How have these courts changed in recent years?

The law in dependency court has changed dramatically in the last 10 to 12 years. The Legislature has emphasized a preference for adoption in cases where reunification with the parent is impossible, and it has also stressed that the processes be sped up for reunification or establishing permanency for children.

What are the benefits for the parties involved in a juvenile dependency court like the one in San Diego?

From the perspective of the public, we are helping families get back together on a more stable basis and giving children a better chance in life. I am very impressed with programs here in San Diego County. Judge [James R.] Milliken and the other judges are almost crusaders in their efforts to address

Continued on page 10

CFCC GENERAL NUMBER:
415-865-7739

CFCC FAX NUMBER:
415-865-7217

Juvenile Dependency Court
Continued from page 9

problems such as substance abuse. This court has a very aggressive substance abuse recovery system that has recorded some remarkable results and has almost reversed the rate of parent-child reunification. Reunifying qualified individuals with their children and shortening the children's stay in foster homes is a great service to the parties involved in the system. And in cases where reunification is not possible, the court is achieving finality by getting kids into permanent placements. A judge can do more good for the public in a courtroom like this in one week than in two to three years in another assignment.

What effect do you think collaborative justice courts such as dependency court will have on the criminal justice system?

Down the road, there is going to be further pressure on the judicial system to try and deliver courts like these. Based upon what I've seen and the statistics available in the system I'm working in right now, the court has made enormous strides to benefit the public. The court's recovery system has saved far more money than it has cost. These courts are cutting not only financial cost but, more importantly, social costs to the children in foster care. Collaborative courts, properly run, have a place in the judicial system and will probably expand over time.

What is the biggest challenge that collaborative justice courts face?

Part of the difficulty in operating these courts is that we have not allocated to them the necessary share of resources. We need to encourage governors to make additional judicial appointments and have other judges willing to work in the areas of juvenile and family law. It makes no sense to have the smallest percentage of judges in the areas that have the highest impact on the public. Something is out of balance when we have family courts with cramped quarters, heavy calendars, and much of the work being done by pro tems and subordinate judicial officers.

What should the Judicial Council's role be in relation to collaborative justice courts?

The council's role should be to set a policy for the state that demonstrates the importance of family, juvenile, and other collaborative justice courts. The council needs to make it clear that this is a statewide priority when advocating for resources, and it should encourage local courts to allow for adequate funding for their own programs. In addition, the council needs to provide leadership in finding a way to encourage the brightest in our judiciary to volunteer for these valuable assignments.

CALL FOR PAPERS

The *Journal of the Center for Families, Children & the Courts*, an interdisciplinary journal focusing on family and juvenile law and judicial administration, seeks scholarly article submissions on current issues facing family courts. For more details, visit our Web site at ***www.courtinfo.ca.gov/programs/cfcc/resources/journal/html***.

Legislative Update

The following list describes bills relating directly to family, juvenile, and domestic violence issues. The list is not exhaustive, and the bills are still pending. These bills are active as of July 6, 2001. Bills and legislative committee analyses are available on the Internet at: *www.leginfo.ca.gov/bilinfo.html.* This information was provided by the Judicial Council's Office of Governmental Affairs.

DOMESTIC VIOLENCE PROTECTIVE ORDERS

AB 160 (BATES) AS AMENDED 6/26/01
STATUS: SENATE JUDICIARY

States the Legislature's intent regarding the respective jurisdictions of the criminal courts and the family and juvenile courts. Clarifies that the criminal court orders have precedence for enforcement purposes but permits orders to be modified, as appropriate. Directs the Judicial Council to promulgate a protocol to provide for coordination of all orders regarding the same persons. Takes effect January 1, 2003.

DOMESTIC VIOLENCE PREVENTION ACT: DEFINITIONS

AB 362 (CORBETT) AS INTRODUCED 2/16/01
STATUS: SENATE FLOOR

Defines the term "dating relationship," for the purposes of the act, to mean frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations.

DOMESTIC VIOLENCE: INCIDENT REPORT

AB 469 (COHN) AS AMENDED 4/25/01
STATUS: SENATE APPROPRIATIONS

Requires a law enforcement officer who responds to the scene of a domestic violence–related incident to prepare a domestic violence incident report that includes a notation of whether he or she inquired of the victim, the alleged abuser, or both whether a firearm or other deadly weapon was present at the location. Requires officers to make a reasonable attempt to confiscate the firearm or deadly weapon if it is discovered that such a weapon is present at the location.

MARITAL LIABILITY: SPOUSAL DEBTS

AB 539 (MADDOX) AS AMENDED 5/10/01
STATUS: SENATE JUDICIARY

Creates a one-year statute of limitations for actions brought against a surviving spouse for debts incurred for the necessaries of life of a deceased spouse, unless the surviving spouse had actual knowledge of the debt and the personal representative of the deceased spouse's estate failed to provide the creditor with timely written notice of the probate administration of the estate.

DISSOLUTION OF MARRIAGE: COMMUNITY PROPERTY

AB 583 (JACKSON) AS AMENDED 5/2/01
STATUS: SENATE JUDICIARY

Modifies the provisions regarding each party's continuing duty to update and augment his or her disclosure of all assets and liabilities by providing that each party shall do so fairly, fully, accurately, and immediately upon material change. Requires that the written disclosure be made in time for the other spouse to make an informed decision as to whether he or she desires to participate in the business or other potential income-producing opportunity. Provides that failure to comply with the requirements regarding preliminary and final declarations is rebuttably presumed not to be harmless error and revises the sanctions for violation of the requirements governing a preliminary or final declaration of disclosure.

CHILD WELFARE SERVICES

AB 636 (STEINBERG) AS AMENDED 6/21/01
STATUS: SENATE APPROPRIATIONS

Enacts the Child Welfare System Improvement and Accountability Act of 2001. Requires the Department of Social Services to establish, by July 1, 2003, the California Child and Family Service Review System in order to review all county child welfare systems. Requires, by July 1, 2002, the California Health and Human Services Agency to adopt measurable outcomes standards for foster children and their families. Requires the agency to take various measures to assist counties in ensuring that these outcomes are met.

DEPENDENT CHILDREN: SIBLINGS

AB 705 (STEINBERG) AS AMENDED 6/11/01
STATUS: SENATE JUDICIARY

Requires a social worker to place siblings taken into temporary custody together, whenever appropriate and practical, or to note in his or her report steps being taken to place them together or why placing them together is inappropriate or impractical. Requires the social worker to provide the supplemental report and recommendation to the child's counsel at least 10 days before the dispositional hearing. Adds Welf. & Inst. Code, § 366.26(c)(1)(E) to state that substantial interference with a sibling relationship would be a compelling reason that termination would be detrimental to the child.

UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT

AB 731 (WAYNE) AS AMENDED 6/20/01
STATUS: SENATE APPROPRIATIONS

Enacts the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, which would authorize the enforcement of a valid foreign protection order in a tribunal of this state under certain conditions. Prescribes the criteria for a determination of validity and would specify that registration or filing of an order in this state is not required for the enforcement of a valid order. Recasts the provisions of existing law that authorizes any individual to register a foreign protection order and that requires a court in this state to register the order.

Continued on page 12

Legislative Update

Continued from page 11

CHILD SUPPORT: DISABLED NONCUSTODIAL PARENTS

AB 891 (GOLDBERG) AS AMENDED 4/23/01
STATUS: SENATE JUDICIARY

Provides that the Franchise Tax Board may not issue or modify an earnings assignment order, or otherwise attach the income of certain disabled obligors, to the extent it would reduce their income below the amount they receive or would be eligible to receive under the state supplementary income program for aged, blind, and disabled persons.

RIGHTS OF FOSTER CHILDREN

AB 899 (LIU) AS AMENDED 5/31/01
STATUS: SENATE JUDICIARY

Requires foster care providers, State Department of Social Services, and others to provide information to foster children about their rights.

JUVENILE COURT PROCEEDINGS

AB 1129 (LIU) AS AMENDED 4/18/01
STATUS: SENATE JUDICIARY

Allows a dependency court to issue ex parte civil harassment orders against the parent or guardian of a dependent child, whether or not the child resides with that parent.

TRUANCY: LOS ANGELES PILOT PROJECT

AB 1536 (CARDENAS) AS AMENDED 5/3/01
STATUS: SENATE APPROPRIATIONS

Provides that, as a pilot project, one division of the juvenile court in Los Angeles County selected by the Judicial Council shall be devoted solely to issues involving truancy and be known as the "truancy court," which would have jurisdiction over the parents or guardians of a truant, as well as the truant, but shall exercise such jurisdiction only upon referral by specified agencies.

BATTERERS' TREATMENT PROGRAMS

AB 1570 (PAVLEY) AS AMENDED 7/3/01
STATUS: SENATE APPROPRIATIONS

Requires these programs to hold consecutive weekly sessions that would be completed within a period of 18 months unless, after a hearing, the court finds good cause to modify these requirements.

PROBATION YOUTH IN FOSTER CARE

AB 1696 (COMMITTEE ON HUMAN SERVICES) AS AMENDED 6/21/01
STATUS: SENATE PUBLIC SAFETY

Makes changes needed to keep California in compliance with federal requirements for probation youth in foster care. Requires county probation officers to make reasonable efforts to prevent the removal of a child from her or his home. Requires the juvenile court to make specified findings regarding the provision of reasonable efforts. Clarifies various provisions regarding the case plan for a ward removed from his or her home and requires that the child's parent or parents have an opportunity to participate in the development of the case plan. Authorizes the juvenile court to forego reunification services when specified conditions exist. Clarifies the date of entry into foster care for a child who was a dependent of the court but for whom a petition is later filed to make the child a ward of the court.

JUDICIAL PROCEEDINGS: JUVENILES

AB 1697 (COMMITTEE ON JUDICIARY) AS AMENDED 4/24/01
STATUS: SENATE JUDICIARY

Authorizes a commissioner or other hearing officer assigned to a family law case with issues concerning custody or visitation to inspect the case file and would authorize counsel appointed for the minor in the family law case, if actively participating in such a family law case, to inspect the case file. Limits the authority given under existing law for inspection by family court mediators and child custody evaluators to those such persons who are actively participating in such a family law case. Specifies that husband and wife may hold property as community property with a right of survivorship. The bill also classifies employees or volunteers of a Court Appointed Special Advocate program as "mandated reporters."

HOMELESS YOUTH EMERGENCY SERVICES

SB 64 (CHESBRO) AS INTRODUCED 1/8/01
STATUS: ASSEMBLY APPROPRIATIONS

Requires the Office of Criminal Justice Planning to conduct a designated evaluation of programs designed to serve runaway and homeless youth and submit the evaluation, with certain recommendations and plans for statewide implementation of the recommendations, to the Legislature on or before January 1, 2003.

DOMESTIC VIOLENCE: PROTECTIVE ORDERS: BACKGROUND CHECKS

SB 66 (KUEHL) AS AMENDED 6/14/01
STATUS: ASSEMBLY APPROPRIATIONS

Requires the court, when considering issuance of a protective order under the Domestic Violence Prevention Act, to cause a search of specified records and databases to be made to determine if the proposed subject of the order has any specified prior criminal conviction or outstanding warrants, is on parole or probation, or is or was the subject of other protective or restraining orders; requires the court to order the clerk to notify appropriate law enforcement agencies of the issuance and contents of the protective order in specified circumstances. Requires the court, if the results of the search indicate that the subject of the order is currently on parole or probation, to order the clerk to notify the appropriate parole or probation officer of the issuance and contents of the protective order.

PREMARITAL AGREEMENTS

SB 78 (KUEHL) AS AMENDED 6/21/01
STATUS: ASSEMBLY FLOOR

Sets forth specified findings that the court is required to make in order to find that the premarital agreement was executed voluntarily. Provides that a premarital agreement regarding spousal support is not enforceable unless the party against whom enforcement is sought was represented by independent counsel. Specifies that a premarital waiver of spousal support may not be enforced if the court later finds it to be unconscionable.

ADOPTIONS

SB 104 (SCOTT) AS AMENDED 6/27/01
STATUS: ASSEMBLY FLOOR

In independent adoptions, provides that the birth parent or parents have a 30-day

Continued on page 13

Legislative Update
Continued from page 12

period in which to sign and deliver to the department or delegated county adoption agency a written statement revoking the consent and requesting the child to be returned to the birth parent or parents. After revoking consent, the birth parent or parents may reinstate the original consent by signing and delivering a written statement to the department or delegated county adoption agency, in which case the revocation of consent would be void and a new 30-day period would commence.

PROPOSITION 21: CRIMINAL STATISTICS

SB 314 (ALPERT) AS AMENDED 7/3/01
STATUS: ASSEMBLY APPROPRIATIONS

Requires the Department of Justice's criminal statistics report to additionally contain statistics on the administrative actions taken by the criminal justice system regarding both juveniles whose cases are thereby transferred from the juvenile court to the jurisdiction of an adult criminal court and those whose cases are directly filed or otherwise initiated in an adult criminal court. Requires that the DOJ collect data to draft the report.

DISCLOSURE OF INFORMATION REGARDING JUVENILES

SB 940 (JUDICIARY) AS AMENDED 6/4/01
STATUS: ASSEMBLY APPROPRIATIONS

Requires juvenile court judges to act in accordance with a specified standard of judicial administration recommended by the Judicial Council that encourages juvenile court judges, among other things, to play a role in the leadership of a community in developing resources for prevention, intervention, and treatment services for at-risk children and families. Requires that any other juvenile court having jurisdiction over the minor shall receive a specified notice from the court in which the petition is filed within five calendar days of the presentation of the recommendations of the departments pursuant to these provisions. Requires law enforcement to release juvenile police records to attorneys representing the juvenile and to the attorney for the parents.

CHILD SUPPORT: HEALTH INSURANCE COVERAGE

SB 943 (JUDICIARY) AS AMENDED 6/27/01
STATUS: ASSEMBLY APPROPRIATIONS

Creates the Child Support Collections Recovery Fund, a continuously appropriated fund, in the State Treasury. The moneys in the fund would be appropriated to make advance payments to local child support agencies of the federal share of administrative payments for specified costs.

JUVENILE OFFENDER CRIME REDUCTION GRANTS

SB 1059 (PERATA) AS AMENDED 6/25/01
STATUS: ASSEMBLY PUBLIC SAFETY

Establishes the Council on Mentally Ill Offenders to develop policy, procedures, and projects related to the treatment of mentally ill adult and juvenile offenders. Establishes the Mentally Ill Juvenile Offender Crime Reduction Grants program.

CHILD CUSTODY: APPEALS, ORDERS, OR JUDGMENTS

SB 1151 (MARGETT) AS AMENDED 3/29/01
STATUS: TO GOVERNOR

Existing law provides that judgments or orders allowing, or eliminating restrictions against, removal of a minor child from the state are automatically stayed for 7 days if entered in a juvenile court proceeding and for 30 days if entered in any other trial court proceeding, in order to allow time for an appeal. This bill excludes from these automatic stay provisions judgments brought pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, the Parental Kidnapping Prevention Act of 1980, or the Hague Convention on the Civil Aspects of International Child Abduction (implemented pursuant to the International Child Abduction Remedies Act).

SPOUSAL SUPPORT: DOMESTIC VIOLENCE

SB 1221 (ROMERO) AS AMENDED 6/21/01
STATUS: ASSEMBLY FLOOR

Provides that in any proceeding for dissolution of marriage brought within two years before or after a criminal conviction for an act of domestic violence perpetrated by one spouse against the other spouse, there shall be a rebuttable presumption affecting the burden of proof that any award of temporary or permanent spousal support to the abusive spouse should not be ordered. Authorizes the court to consider a convicted spouse's history as a victim of domestic violence as a condition for rebutting the presumption. Requires the court to consider a reduction of the award of spousal support to a supported spouse if the court finds documented evidence of a history of domestic violence against the supporting spouse by the supported spouse.

NEW TRANSLATED FORMS

The Judicial Council's domestic violence restraining order forms are now available in Spanish, Chinese, Korean, and Vietnamese. The translated forms include the Emergency Protective Order and commonly used civil and criminal protective order forms. Camera-ready copies of the forms were distributed to all courts. The forms are also available for downloading at *www.courtinfo.ca.gov/forms/*.

California law provides that all official court forms must be in English. Therefore, each translated form contains a notice in one or more locations that the form is for information only and may not be filed with the court. In addition, the cover page for the instructions (Judicial Council form DV-150) states clearly that the translated materials are for information only and may not be filed. This cover sheet can be attached to any translated forms distributed to litigants. Please contact Tamara Abrams (tamara.abrams@jud.ca.gov) with any questions or concerns.

Fresno County Spotlights Successful Grant Programs

EMPHASIS: ACCESS

Ms. Kerri Keenan,
Planning and Outreach Director, Superior Court of Fresno County

The Superior Court of Fresno County is in its second year of receiving grant funding from the Administrative Office of the Courts to operate family law information centers (FLIC). The court received grant approval in February 2000, and the program was up and running in June of the same year. So far, this program has provided hundreds of families with much needed legal assistance and contact with the court.

Geographically, Fresno County is large (over 6,000 square miles) and has a diverse population. While most of the population lives in the City of Fresno (420,600), a substantial number of residents live in incorporated (208,105) and unincorporated (176,400) areas. The main courthouse facilities in the City of Fresno are served by the FLIC programs, as are seven of the court's outlying locations: Coalinga, Kerman, Firebaugh, Fowler, Selma, Kingsburg, and Sanger.

Based on need generated by filings, income level, and the lack of transportation, this program is designed to provide assistance on a variety of family law issues that go beyond the scope of services available through the Office of the Family Law Facilitator. The program pays for two attorneys who travel to courthouses in outlying areas to provide those communities with on-site services. The types of things these attorneys help people with are support issues, custody and visitation, paternity actions, domestic violence petitions, and dissolution packages.

The court partners with local community service groups to complement what the court is offering. For example, Central California Legal Services (a nonprofit legal assistance agency) sends an attorney to three different locations throughout the county to work specifically on domestic violence actions. Also, interpreters are available through Central California Legal Services, Centro La Familia, and CalWorks. Initially, the grant provided some money for interpreters, but this is not a component of the second year's funding.

The FLIC program has exceeded initial expectations for expanding services to outlying communities and providing outreach to the people who need these services. Currently, we are in the process of establishing a database of client-specific information, including the number of referrals to other agencies, and will use this data to shape future goals and objectives. In summary, this program is accomplishing the following goals:

- **Access:** Court is more accessible because staff are able to make legal procedures understandable to pro per litigants.
- **Convenience:** The outlying courts are more familiar with family law proceedings and now accept those filings. Also, an attorney is available on site at least one day a week to assist the public.
- **Expanded Services:** The program provides services in the outlying courts instead of requiring people to travel to downtown Fresno.
- **Partnership:** Program staff coordinate services and referrals with other agencies and, in some instances, team up with other staff to complement one another.
- **Public Satisfaction:** Staff frequently hear how nice it is to have someone who can help get answers to their questions. Before this program was in place, many of the people being served did not know whom they should go to for assistance.

The family law information centers will be of great assistance when the court implements the next phase of public outreach with another grant-funded program, the mobile assistance unit.

FRESNO COUNTY SUPERIOR COURT IS AWARDED GRANT FUNDING TO PURCHASE A MOBILE ASSISTANCE UNIT

The Administrative Office of the Courts awarded a $142,000 grant to the Superior Court of Fresno County to purchase a mobile assistance unit. The money has been used to buy a motorhome that is being customized as a traveling office, complete with computer, work and video stations, bookshelves, and built-in display units for brochures and manuals.

The original project plan identified low-income individuals and families who either cannot, or will not, retain a lawyer for legal assistance. The percentage of Fresno County residents living below the federal poverty level is estimated at 23 percent (compared to the rest of California at 12.5 percent). As of March 1999, approximately 202,367 individuals in Fresno County were estimated to be receiving public assistance. And this does not include the large number of undocumented migrant workers who come to Fresno on an annual basis for seasonal work. The family law bench estimates that about 80 percent of plaintiffs and respondents are self-represented and have been granted fee waivers.

The diversity of Fresno's population compounds these problems because, apart from poverty, other barriers such as culture, education, and age preclude people from accessing the justice system. According to the 2000 U.S. Census, 44 percent of Fresno's population is Hispanic, and the next largest ethnic group, at approximately 11 percent, is

Continued on page 15

Fresno County Grant Programs
Continued from page 14

from Southeast Asia. Fresno County has a high school dropout rate of 36 percent—one of the state's highest. Fresno also has a young population, with 42 percent falling within the 0–24 age group, and one of the highest adolescent birthrates in the state. These demographics are linked to the increase in family law filings and domestic violence arrests since 1994. The court realizes that there are a large number of undereducated, low-income individuals and families who need help understanding how the justice system works.

To provide outreach to Fresno's unique population, the mobile assistance unit will travel to remote locations in the county, concentrating on areas where there is no courthouse. The court plans to take the mobile unit to events that attract large cross-segments of the community (e.g., the Big Fresno Fair) so people will know the service is available and can use it that day if they need to. As with the family law information center, we are already planning partnerships with related agencies so their services can be provided in conjunction with the court.

Information and assistance will not be limited to family law, but a wide range of resources will be devoted to these matters. Staff from the family law information center, the Office of the Family Law Facilitator, and Central California Legal Services will be available to answer questions and assist the community. Since many of Fresno's neighboring counties (such as Madera, Kings, and Tulare) struggle with the same population problems and this unit is only the second of its type in the state, we envision being able to make the mobile unit available to citizens throughout the Central Valley.

Fresno looks forward to putting the mobile unit on the road beginning in September or early October. This is a very exciting opportunity to reach out to all members of the community and make the justice system accessible!

Kerri Keenan is the Planning and Outreach Director for the Superior Court of Fresno County. Ms. Keenan is responsible for strategic planning, community outreach, and working with judges and managers to develop and implement access programs for the court.

I-CAN! Goes Live

Ms. Faustina DuCros Rodriguez,
Director of Fund Development, Legal Aid Society of Orange County

In November 2000, the Superior Court of California, County of Orange and the Legal Aid Society of Orange County (LASOC) launched I-CAN! (Interactive Community Assistance Network), a kiosk and Web-based legal services system designed to provide self-represented litigants convenient and effective access to vital legal services. Its multilingual, interactive, and tutorial modules "map" client responses to the appropriate areas of the related judicial forms, enabling self-represented litigants to create properly formatted pleadings. Using a touch-screen interface and audiovisual presentations, I-CAN! also answers frequently asked questions, provides court tours, and educates users on the law, filing procedures, and steps needed to pursue or defend their cases. Video-conferencing technology is being integrated into I-CAN! to enable users to obtain immediate assistance from help center staff at LASOC. I-CAN!'s innovative adaptation of technology is an effective complement to the traditional (clinic or one-on-one setting) strategies used to try to meet the overwhelming need of low-income persons for increasing access to the justice system.

BARRIERS

There are more than five million poor people in the State of California, and according to studies, only 25 percent of low-income persons who need assistance with a serious civil legal problem will be able to obtain it. Many of these low-income persons are often denied the judicial protection or relief in matters that affect their survival—individual or family safety, shelter, and medical care. Because they lack resources, they are forced to represent themselves in court without adequate information. These litigants expect a clerk or the judge to be able to provide legal assistance even though this is impermissible in our adversarial system. They often leave the court system alienated and view it as an obstacle to their efforts to seek legal protection.[1]

Continued on page 16

1. Source: State Bar of California, Office of Legal Services, Access to Justice Working Group, *And Justice for All: Fulfilling the Promise of Access* (1996).

I-CAN! Goes Live

Continued from page 15

In the legal community, two major barriers to deploying technology exist: limited client access to computers and the inherently hard to use computer-to-person interface.[2] I-CAN! has overcome these barriers in two distinct ways:

1. I-CAN!'s kiosk format allows the self-contained software and computer to be deployed in areas easy for clients to access, such as in courthouses, legal aid offices, domestic violence shelters, public libraries, and other community locations. The combination of browser-based software with kiosks makes I-CAN! easy to use. The kiosks have touch-screen monitors, which lessen the need to use a keyboard for inputting or accessing information. I-CAN! also "hides" the identifying marks of a browser, which otherwise often confuse those who are not familiar with browser-based software.

2. I-CAN! uses video technology to generate a virtual guide who helps users complete the I-CAN! forms. This video guide, an on-screen "person" who speaks the written text and questions that the user must navigate in order to complete a pleading, increases the comfort level of the user and makes the I-CAN! process more understandable. The user can replay the video as many times as needed to understand what is required to finish any given screen. This feature is also helpful to users with low literacy skills. This video technology is also used for I-CAN! virtual court tours, which orient the litigants to the courtroom and the clerk of the court, provide directions to the courthouse, and give information about parking and security procedures. The court tours have been designed to also be segments in community education shows broadcast on public access cable stations in the deployment areas.

DEPLOYMENT

The new family law information center at the Lamoreaux Justice Center has hosted two of four superior court kiosks. The first module to be deployed, Answer to Complaint Regarding Parental Obligations, was a collaborative effort of LASOC and the court's Office of the Family Law Facilitator. The services provided by I-CAN! have allowed the court to expand and improve its services and have been beneficial in providing the public with greater access.

The court's third kiosk, which launched the Domestic Violence Restraining Order module, was placed in the Victim/Witness Assistance Program office at the Lamoreaux Justice Center in February 2001 and has been very helpful in serving the client community.[3] To further the service that is provided to the victims of abuse, LASOC is currently working with local domestic violence agencies to integrate I-CAN! into their programs.

The fourth court kiosk was just recently installed at the North Justice Center in Fullerton. The list of deployment sites is growing as the I-CAN! project progresses. In addition to the superior court locations, the Orange County District Attorney's Family Support Division, Fullerton Library, Irvine City Hall, and San Juan Capistrano Library are hosting either I-CAN! kiosks or computer workstations. Since its first deployment, I-CAN! has been well received by its users. Of 177 user surveys returned to LASOC, 96 percent stated that I-CAN! was either "helpful" or "very helpful."[4]

REPLICATION

A proven concept and design, I-CAN! is also easy for other agencies to replicate because it uses standard technology and legal forms that are common throughout California. The transfer of I-CAN! to other jurisdictions will be made possible by mapping the areas in each module that are region-specific and making the appropriate changes. I-CAN! video segments are also designed in a way that facilitates the development of regionally customized content at a low cost. In addition, I-CAN! services are presented in a user-friendly format that includes audiovisual presentations and simple directions geared toward the fifth-grade literacy level to ensure successful interaction with litigants. I-CAN! is useful and helpful even for those persons with little or no computer experience. A recent user of the domestic violence module said this about I-CAN!, "I thought it was going to be overwhelming, but the computer helped a lot."

Legal Aid Society of Orange County is committed to making I-CAN! technology freely available to other legal services providers, courts, and community-based agencies that wish to provide free legal services to their low-income clients. If your organization is interested in learning more about I-CAN!, please contact LASOC at 714-571-5232 or ican@legal-aid.com.

Faustina DuCros Rodriguez has been the Legal Aid Society of Orange County's Director of Fund Development since August 2000. Ms. DuCros Rodriguez plays a substantial role in grant administration, which involves planning, coordinating, funding, and implementing new and existing programs at LASOC, including the I-CAN! project. In addition, she works closely with the I-CAN! team to establish and maintain collaborative partnerships with community-based organizations that want to provide I-CAN! services to their clients.

---

2. Source: R. Zorza, Esq., "Paper One: Client and Community Organization Needs and Potential," *The Legal Information Needs of Poor and Middle Income People and the Organizations That Advocate for Them* (2000).

3. Community Service Programs is the organization designated by the court to handle Orange County's domestic violence cases through the Victim Witness Assistance Program.

4. I-CAN! sites are able to support all developed modules. I-CAN! currently supports License Denial Review in English, Spanish, and Vietnamese. The following civil matters are supported in English and Spanish: Answer to Complaint Regarding Parental Obligations, Paternity Petition, and Wage Assignment Review. Domestic Violence Restraining Orders, Fee Waiver, and Small Claims are currently available in English. Unlawful Detainer is currently being developed for English and Spanish use and has not yet been deployed.

Educational Advocacy in California CASA Programs

Mr. Graham Holland, Project Coordinator, California CASA Association

MARIN COUNTY

The Marin CASA program encourages its volunteers to attend any and all education-related meetings for their CASA child. This includes school meetings, School Attendance Review Board meetings, and individualized education program (IEP) meetings, even if the parents' educational rights have not been terminated. Where the parents' educational rights have been terminated, the program generally defers the educational surrogacy to the foster parent if the placement is stable and "long-term." The CASA would be the second choice for surrogate parent appointment. Marin County CASAs are prepared for the surrogacy role in several ways. On an individual basis, they consult with a CASA who is an experienced school surrogate, draw on their own school education background, and/or attend an in-service training.

RIVERSIDE COUNTY

The Riverside County CASA program has had an Educational Surrogacy Program since 1999. During one entire session of Riverside's 35-hour training program, professionals from two school districts are brought in to train and certify CASAs, all of whom will serve as their child's educational surrogate. As individual cases arise, the program may receive requests from school districts or the Department of Child Social Services for a surrogate. Since all CASAs in Riverside have been certified as educational surrogates, they can attend IEP meetings even if they are not the CASA for the child for whom the meeting is being held.

SISKIYOU COUNTY

Choices for Children of Siskiyou County employs a full-time educational advocate, Jeffrey Hoyt, who is a California-credentialed teacher and has a background in special education, "regular" elementary, and adult school. He works with the parents (if they retain their educational rights), the foster parent, or the surrogate and is currently serving approximately 15 children ages 2–11. If a child is referred or already has an active case, he initially reviews the cumulative file, interviews school personnel, and then meets the child. Next he requests a student success team (SST) meeting, assessment, or modification to the current IEP if needed. He attends court on a regular basis and provides an educational review attached to CASA reports. Currently Choices for Children is working on a collaborative effort with the special education local plan area (SELPA), DSS, deputy county

Continued on page 18

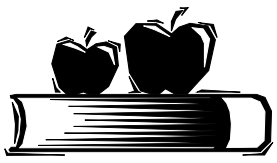
Upcoming Educational Training Institutes

SPONSORED BY THE AOC'S CENTER FOR FAMILIES, CHILDREN & THE COURTS

ANNUAL NEW FAMILY COURT PROFESSIONAL INSTITUTE
August 13–17, 2001
Westin, San Francisco

FIFTH ANNUAL AB 1058 TRAINING
September 20–22, 2001
Sheraton Hotel, San Diego

A CALIFORNIA YOUTH TRAINING CONFERENCE
October 25–26, 2001
Administrative Office of the Courts
San Francisco



CENTRAL VALLEY FAMILY COURT SERVICES REGIONAL INSTITUTE
September 20–21, 2001
San Joaquin College of Law, Clovis

FAMILY COURT SERVICES SOUTHERN REGIONAL INSTITUTE
October 25–26, 2001
Marquis Hotel, Palm Springs

FAMILY COURT SERVICES BAY AREA REGIONAL INSTITUTE
October 18–19, 2001
San Mateo

FAMILY COURT SERVICES FAR NORTHERN REGIONAL INSTITUTE
November 12, 2001
Mount Shasta

BEYOND THE BENCH XIII
December 5–7, 2001
Hyatt Regency, Monterey

FAMILY COURT SERVICES STATEWIDE EDUCATIONAL INSTITUTE
March 21–23, 2002
Long Beach

FAMILY VIOLENCE AND THE COURTS CONFERENCE
May 17–18, 2002
Disneyland Marriott, Los Angeles

FOR ADDITIONAL INFORMATION ON DATES AND LOCATIONS, PLEASE CALL 415-865-7739

Educational Advocacy in California CASA Programs
Continued from page 17

counsel, probation, and the superior court judge to create a blanket order that would allow the educational advocate access to the records of all foster youth in Siskiyou County, with the goal of monitoring all health and education passports and cumulative files. Finally, the educational advocate participates on the Community Advisory Committee, the Foster Care Task Force, and the Mediation Task Force to help enlighten the community on the specific educational needs of foster youth.

SAN LUIS OBISPO COUNTY

CASA/Voices for Children of San Luis Obispo runs the Community Awareness, Advocacy, and Resources for Education (CAARE) Center. Although CASA first started becoming involved in educational advocacy because children in the court system were especially vulnerable to educational difficulties, the CAARE Center was established to assist all students with difficulties in school. The CAARE Center provides guidance in resolving educational problems, coordination with other agencies and services, attendance at school meetings by educational advocates, and assistance to parents in understanding IEPs and the special education system. In addition, the center has a resource library consisting of books, videos, and audiotapes as well as articles addressing topics relating to special education and advocacy.

Graham Holland is the Project Coordinator for the California CASA Association. He left teaching after two years to join the new CalCASA administration and has been assisting them for the past year with writing, editing, and using new technologies. He will be leaving to teach fifth grade in Oakland this fall.

San Francisco CASA Addresses the Educational Needs of Children With Behavior Disorders

Ms. Libby Colman, Ph.D.,
Program Director, San Francisco Court Appointed Special Advocates

In the 19th century, the British shipped unruly street urchins to Australia. The City of New York loaded unwanted and vagrant youth onto "orphan trains" and sent them west. Today, dependent and delinquent children may be placed in foster care or group homes. Half of the children in San Francisco wind up in placements outside the county. Too often they drop out of school, go AWOL from their placements, and end up indigent or incarcerated.

Dependent and delinquent children may suffer from educational deficiencies and disabilities. In a previous issue of *Update,*[1] Kathleen Kelly described the programs and judicial remedies aimed at helping children in desperate need of services. This article focuses on ways in which the San Francisco Court Appointed Special Advocates Program (SFCASA) addresses the educational needs of foster children, especially those with behavior disorders.

PARENTING BY COMMITTEE

Schools expect every child to have a parent actively involved. Instead of a parent, foster children are represented by a veritable committee of "stakeholders" that, at any one time, may include parents, other relative caregivers, a Department of Human Services child welfare worker (CWW), a foster parent, a CASA, a Foster Family Agency social worker, a Foster Youth Services case manager, the minor's attorney, a therapist, a tutor, a mentor, after-school program staff, and group home staff.

Among all these, who is most responsible for going to school meetings, for insuring that the child's educational case file is up to date, for ordering appropriate evaluations, and for navigating the bureaucratic maze of applying for special services? Too often, the answer is none of the above.

The records of many children in long-term placement simply lack up-to-date educational information. Even if they do have a "Health and Education Passport," it may not follow them to a new school district.[2] At the very least, every child in foster care needs such a passport to avoid disruptions in his or her education. While California Assembly Bill 797, if passed, would create guidelines for establishing Foster Youth Services programs to case-manage educational services for foster youth, until resources and funding are developed, this is an unrealistic expectation in most counties.

The CWW, who is responsible for case management, may actually lack any direct history with the child or training in educational advocacy. The foster parent, even if willing to help, might be in the child's life for only a brief period of time. It is unlikely that the group home will have anyone on its staff qualified to track the child's specific educational needs and progress. Under these circumstances, the CASA volunteer can play an important role by confirming that the child's educational records are in the hands of new caregivers and schools when the child moves. The CASA can also make sure that the new school complies with legal timelines for implementing a new individualized educational program (IEP) or other special services the child requires.

SFCASA AND EDUCATIONAL ADVOCACY

SFCASA currently serves about 120 school-age children and another 70

Continued on page 19

San Francisco CASA

Continued from page 18

children under the age of 5. Our volunteers are educational surrogates responsible for approving the IEP for 25 percent of these children. SFCASA trains all of its volunteers in educational advocacy and encourages them to attend student success team (SST) or IEP meetings. If a parent or other caregiver is willing and able to sign the papers, the CASA acts as their consultant in the process.

Our experience with educational advocacy has taught us about the bewildering regulations and timelines of applying for special education and AB 3632 (mental health) services. We have also encountered the complex problems that the system has with disruptive children. In December 2000 we received a grant from the Walter and Elise Haas Fund to "enhance and strengthen services to emotionally disturbed children in foster care." We are especially interested in the problems of children with disruptive behaviors, who desperately need help but are often denied special education services or are placed in classrooms that do not satisfy their academic needs.

THE PROBLEM WITH BEHAVIOR PROBLEMS

Many foster children have genuine impediments to learning that elude neat categories. Their disruptive behaviors are referred to as "acting out" because they enact or embody the pain these children carry as a result of trauma suffered in the past or present, pain which they do not know how to experience as feelings or emotions. All foster children have suffered from trauma, either through abuse, profound neglect, or severe loss. All of them suffer the emotional and behavioral consequences of these terrible life events. The question is not whether the children have these problems, but whether they manifest them in ways that require special services.

Disruptive behaviors may include:

- Violent temper tantrums in the classroom;
- Tardiness and truancy;
- Lying and/or stealing;
- Aggression toward other children, teachers, caregivers, and/or animals; and
- Self-mutilation and/or suicidal thoughts or actions.

Children who do these things often get suspended or expelled from school, which may leave them at home (perhaps unsupervised and playing violent video games for hours at a time) without any educational services. Behaviors like these in foster homes or group homes often lead to a seven-day notice, which can result in a move and further disruption of educational services. These are the children subject to "foster care drift" who are likely to end up in the juvenile justice system and, too frequently, in the adult prison system.

We know that adult prisoners have histories of childhood behavior problems at a much higher rate than members of the general population. Research shows that most conduct-disordered children don't become antisocial, criminal adults, but that a disproportionate number of graduates of the foster care system do. With the help of the Haas Fund, we are tracking assessments and interventions on 60 behavior-disordered foster children. We are anxious to see how the children are doing after a year.

Unlike most disabilities, behavior problems are intermittent rather than constantly present (as blindness or autism would be). Consider a typical scenario. The child acts out. An adult intervenes. The child calms down as the anger passes and the situation appears to be resolved. At the next school conference, caregivers and educators feel optimistic that the problem has been "fixed." Typically, however, the child's behavior will erupt again, undiminished by the earlier interventions. The root causes have not been addressed, and the child has not learned new behaviors for dealing with stress.

It is hard for a teacher to put up with a disruptive student who is making it

Continued on page 20

CFCC Launches Listserv for Family Violence Coordinating Councils

CFCC recently launched a listserv exclusively for California's Family Violence Coordinating Councils. The purpose of each county council is to facilitate collaboration and information sharing among the courts and public and private agencies on domestic violence issues. Council members typically include judicial officers, court executive officers and clerks, domestic violence victim's advocates, prosecutors, defense attorneys, probation officers, social services staff, mediators, family law facilitators, supervised-visitation agency staff, police officers, health-care personnel, attorneys, and others who work on domestic violence issues.

The Judicial Council sponsors an annual conference to bring together coordinating council members from around the state to network, share innovative strategies, and learn from national and international experts.

We are excited to provide the listserv as an additional venue for council members to share strategies, funding sources, and promising practices. To subscribe, please send an e-mail message to tamara.abrams@jud.ca.gov or julia.weber@jud.ca.gov.

Please include:

1. Your name;

2. Your organization's name, address, and telephone number;

3. Your e-mail address; and

4. A brief description of your participation in your county's family violence coordinating council (one or two sentences).

Please contact Tamara Abrams, CFCC Domestic Violence Staff Attorney, at 415-865-7712, or Julia Weber, CFCC Family Violence Specialist, at 415-865-7693, for more information.

Continued from page 19

impossible for others to learn. It can be truly frightening for a foster parent to try to set limits for a potentially violent child. It is difficult for a CASA volunteer to remain optimistic and patient when a assigned youth consistently fails to show up for appointments. Too often, the solution of least resistance is to move the child to a new home in the hope that he or she will be more content in that environment. It can be easy to forget that the infuriating behaviors may be either a by-product of an underlying mental illness or a pattern learned from a violent family. In either case, another move is unlikely to be therapeutic.

ADVOCATING FOR CHILDREN WITH BEHAVIOR PROBLEMS

Despite the flaws in the current system, there are some things we can and ought to do. First, children with seriously problematic behaviors need neuropsychiatric evaluations that can ferret out the reasons why they do what they do. Their behaviors may be symptoms of psychiatric problems as diverse as schizophrenia, bipolar disorder, depression, post-traumatic stress syndrome, dissociative disorders, attention deficit disorder, hyperactivity disorder, reactive attachment disorder, or frustration consequent to unrecognized learning disabilities and minimal brain dysfunction.[3] Some of their learning and behavior problems may be consequent to prenatal exposure to alcohol or other toxic substances. Some may be a failure of brain development related to inadequate attachment or stimulation in their early years. The point is that behavior problems are likely to be symptoms of underlying disorders of brain structure or chemistry. They must be diagnosed before they can be properly treated.

Another tool at our disposal is behavioral assessment. A functional behavioral assessment can describe the problems the child is having at school and at home and help the committee of caregivers develop positive behavioral interventions to deal with the problems. Clearly, for any intervention to be effective, all of the stakeholders must work together, recognizing that the problems will reoccur and being prepared to be both consistent and persistent in responding to the targeted behaviors.

Many schools are not using the interventions that are available for these "bad behavior" children. Some administrators and teachers see the problems as disciplinary issues rather than relating them to emotional illness or disability. Reporting on their research in nine Bay Area Counties, the Bay Area Social Services Consortium concluded that: "Due to behavior problems in the classroom, foster children without learning disabilities tend to be given IEPs and placed in remedial learning classes. These classes do not meet their needs and their placement in these classes may disrupt their peers."[4] Traditional special education classes are not really the answer, and yet these children do have profound conditions that impair their ability to obtain an education in mainstream classrooms.

The hard truth is that we need to create a different kind of learning setting. We need more special day classes for children who are capable of handling the regular school curriculum but are not yet able to comply with the behavioral requirements of a regular classroom. We need well-trained consultants in the schools who can help staff deal with the complex issues (as is currently happening in San Francisco through the Residency Training Program at Langley Porter Psychiatric Institute of the University of California Medical Center). Early intervention is essential. We really cannot afford the social cost of doing nothing, or of doing the wrong thing.

At SFCASA, we have seen too many children succeed only after "failing upward" to increasingly restrictive environments until they are in residential treatment centers with nonpublic schools on campus. We have also seen too many others failing downward from foster homes to group homes until they end up as teens who are chronically AWOL but surface occasionally at the youth guidance center. Both of these outcomes are expensive for the taxpayer and traumatic for the children.

CONCLUSION

Every child has a right to decent care, even if it is provided by a well-intentioned but sometimes dysfunctional committee. The trick is to make that committee all that it can be.

We advocates—including CASAs, attorneys, child welfare workers, and educators—have to believe that each and every one of these children can learn and will benefit from enhanced educational and mental health services. Abuse and neglect have profound effects on cognitive development and mental health, which manifest as behavior problems that impair a child's ability to get an education. Too often, these behavior problems are not officially recognized disabilities or emotional disturbances. We must utilize all the laws that are already in place to ensure that disruptive children with severe problems, especially those in foster care, get the special help that they need and deserve. Ultimately, this help should include a safe and permanent home with a parent who can work with the school and mental health providers to address all of the child's needs.

Libby Colman has been the program director of SFCASA since 1997. She was a CASA volunteer in Marin county for six years. She is a social psychologist and an author of eight books.

---

1. Vol. I, no. 3 (Oct. 2000): 1.

2. P. Choice, et al., "Education for Foster Children: Removing Barriers to Academic Success," Bay Area Social Services Consortium (University of California, Berkeley, 2001).

3. D. O. Lewis, in L. Lewis, ed., "Conduct Disorder," *Child and Adolescent Psychiatry: A Comprehensive Textbook*, 2d ed. (Baltimore: Williams & Wilkins, 1996) pp. 564–577.

4. Choice, pp. 93–94.

Santa Clara County's Leadership Role in Community Outreach Programs

Ms. Debra Faraone Hodges,
Director of Special Projects for the Superior Court of Santa Clara County

Both February and April were banner months for community outreach efforts for the Superior Court of California, County of Santa Clara. On February 14, the court assumed a national leadership role in addressing the issues of juvenile mental health by holding the nation's first Juvenile Mental Health Court (JMHC), thus increasing effectiveness of community mental health treatment for juvenile offenders who are accused of less serious offenses. Supervising Judge Raymond J. Davilla, Jr. will preside over this specialized court every second and fourth Wednesday afternoon of the month.

Protracted involvement with the juvenile justice system has become a common pathway for many youth with serious mental illness. Through early identification of available resources for those youth suffering from developmental disabilities, organic brain syndromes, and brain conditions with a genetic component, the goals of effective juvenile rehabilitation and community safety are addressed and processing within the juvenile justice system for these youth with serious mental illness is expedited. The court has accomplished this feat through a collaborative effort involving judicial officers, prosecutors, public defenders, mental health representatives, juvenile probation, and treatment provider representatives.

Santa Clara's JMHC will effect a more humane treatment of juveniles with serious mental illness, help relieve overcrowding in detention facilities, and decrease recidivism among youth. Judge Davilla states, "The JMHC will give us many more options in the proper treatment of these youth as well as the protection of our community. This is truly a team effort, which will continue to adjust as we better define the needs of our juvenile population."

On April 3, Judge Leslie C. Nichols presided over an actual DUI bench trial that was held for the first time in California history before 300 high school students at San Jose's Oak Grove High School. This was a collaborative effort of the court and the Office of the District Attorney, the Office of the Public Defender, the Eastside Union School District, and the Santa Clara Valley Health and Hospital System/Public Health Department. The trial served as a prototype for a countywide "Court in the Schools" program that is being developed.

This joint endeavor gave high school students insight into the operation of the court and also drove home the impact of alcohol-related problems in the community. From 1997 through 1999, there were 24,471 DUI arrests in Santa Clara County, making it the most frequently committed offense in the county. While learning through the DUI bench trial about the judicial system, students also were able to obtain firsthand knowledge about the ramifications of a DUI arrest and trial for an individual. During the course of the bench trial, testimony revealed the public shame of the defendant's arrest and initial incarceration. Upon conviction, the sentencing portion exposed the financial impact of fines and increases in insurance premiums, the time needed to complete alcohol classes, and the personal difficulty of serving a jail sentence.

Debra Faraone Hodges is the Director of Special Projects for the Superior Court of California, County of Santa Clara. Among her duties are those of the court's public information officer and community-focused court strategic planning coordinator. She currently is the project manager for the development of the self-service center for the court. Debra is an active member of Santa Clara County Law Advocates, an organization that promotes law-related education for local students. She also participates as a mentor for Eastfield Ming Quong.

Contact:
Superior Court of California,
County of Santa Clara
111 West St. John Street, Suite 100
San Jose, CA 95113
Phone: 408-299-2074
E-mail: dhodges@sct.co.scl.ca.us

THE AOC PROUDLY ANNOUNCES ITS CALIFORNIA COURTS ONLINE SELF-HELP CENTER

The Self-Help Center, which can be found at *www.courtinfo.ca.gov/selfhelp*, was available for previewing by the courts on June 18, 2001, and launched to the public on July 17, 2001. The Self-Help Center, a joint project by the AOC's Center for Families, Children & the Courts and the Office of Communications, contains a wealth of procedural and substantive information about various areas of the law, including family law, small claims, traffic, guardianships and conservatorships, juvenile law, name change, elder law, civil harassment, and domestic violence.

The Online Self-Help Center offers over 900 pages of easy-to-understand descriptions of court procedures and step-by-step guides for choosing and completing appropriate court forms, as well as links to legal service organizations, alternative dispute resolution providers, and lawyer referral programs. The center also allows users to access information about the superior court in their county, including information about the county law library, the family law facilitator's office, and family court services.

What Is Wrong With This Story?

Judge Lois Haight, Superior Court of Contra Costa County

Reprinted with permission of the National Council of Juvenile and Family Court Judges, Juvenile and Family Justice TODAY, *Vol. 9, No. 4.*

The following is an edited version of the keynote address given by Judge Lois Haight of the Superior Court of Contra Costa County, on the occasion of the Nexus V (Inter-Agency on Child Abuse and Neglect) Conference in Los Angeles, November 9, 2000. The conference was attended by more than 1,000 judges, prosecutors, social workers, police, health professionals, and others in the juvenile-justice field.

This morning I am going to give you a view from where I sit as the presiding juvenile court judge in a typical California county. A county with a large population, dynamic suburban development, exploding wealth and poverty, and typical problems that all of you know and recognize as a part of your everyday responsibilities working in this area. I preside over both delinquency and dependency cases, but I am going to focus on dependency and the children who are the victims in these cases.

I would like to begin with a story that you will all recognize because you have each seen all or part of it before. Then I would like to ask you what is wrong with the story. I have been thinking about it for a while now and I think that some of you may come to the same conclusion I have: that we may be heading in the wrong direction.

Let's say that a six-year-old child has told her teacher that Daddy was beating and molesting her. Her mother doesn't believe her. Her daddy won't stop and threatens to hurt her if she tells. The teacher notices bruises, and when she questions the child as to their origin, the child breaks down and tells her all the facts of the abuse. As a mandated reporter, the teacher correctly calls child protective services, and the Department of Social Services comes into play.

An abuse is reported and an emergency social worker responds to investigate. The worker talks to the child alone, and the child risks everything to tell this stranger the gruesome, embarrassing, humiliating, painful details of her sordid life. The child tells this very caring, sympathetic social worker of the betrayal of parents who are supposed to love and protect but don't. The child bares her soul to this caring stranger and then the child is more often than not taken from that bad home and placed in a 24-hour or longer shelter until an appropriate emergency foster home can be located. There are more strangers, and the caring social worker has left.

Now, I don't want you to get me wrong. These foster parents or shelter care workers who provide emergency assistance are well meaning, caring, loving, and supportive. Where would we be without them? They are nevertheless strangers to this young child, and being part of an emergency home, they are temporary strangers. Then the cycle really begins. A new social worker comes and talks to the child, and there are new strangers at almost every turn.

We have specialists in social service … specialists in emergency response, specialists in investigations, specialists in court, specialists in voluntary and family maintenance, specialists in reunification, specialists in permanency planning, and specialists in adoptions.

Where is the child in all this, the child whose victimization brought us all into play? Who does the child turn to?

The child is removed from the only home they usually have known. No matter how terrible, they know this home and sometimes that old adage, "Better the devil you know than the devil you don't know," is pretty appealing.

You all know that most children blame themselves when they are removed from their home. After all, Mommy and Daddy get to stay there and they, the bad child, are taken away. They blame themselves. If only they had been better, or done their chores, or minded, Daddy wouldn't have to hit her so hard and left bruises. If she had never told of the molest, she could still be home and Mommy and Daddy and Grandma and Grandpa would not be mad. If she hadn't told, they would not blame her for involving others in this family affair and would not blame her for the costs and the lawyers and the court and the awful judge. The child feels completely abandoned by her family.

The question is, how do we treat this child? Most of you know what these children think as they huddle in this brand-new strange place with all of these new strangers: "What happened to the last nice person who came and listened and cared and took me away and said I would be safe? Why did they leave me? Why don't they come back? Didn't they like me? Didn't they believe me? Didn't they want me as a friend? They seemed to want me as a friend when they were asking me all those questions."

Next, a new social worker appears and questions and cares and implies,

Continued on page 23

What Is Wrong With This Story?

Continued from page 22

"Trust me," with genuine caring. Then they leave and yet another appears at another stage of the proceedings, and then another as the case progresses with perhaps several different foster homes in between.

Where is the child in all this?

What does this do to the child we are all here to protect, save, encourage, and support?

There is often a minimum of 4 to 7 different social workers on a given case. I had a case recently with more than 10. It gets worse if a mother has other children in different stages of the proceedings. The same family may have 2, 3, or 4 social workers at the same time for different children.

The staggering cost of duplicative time and effort with many social workers on the same case is mind-boggling. They are supposed to totally read over the file and know everything in it when they take over a case. Do you know how long that must take? Just my reading of each new disposition or review report takes quite a long time if I want to be thorough, and I am a fast reader. What about the new social worker that must read through volume one and volume two of the case file before they can be up to speed on the case? Do they do it? Oftentimes in court when I ask a worker on the stand a pointed question about the history of the case (because it has been before me for two years), they don't know what I am talking about. I find this fact alone to be frightening.

What happens to this child with all these new people in their lives that come and go? People who care and split, people who encourage confidences and are never seen again? Sometimes it's a therapeutic report that comes to me, finally, with a predictable diagnosis of the child: "Attachment disorder." The child can't bond with anyone. This is not a big surprise, and we blame the parents for this. You all know the ramifications of that diagnosis. They can't be adopted, or at least their chances are slim. How many prospective adoptive parents will chance a child with such a diagnosis?

What is wrong with this story? Now I know that there will be many thoughtful answers from this audience, but before you render your final opinion, let me offer a few suggestions. I see this case in one form or another many times a week, and after seven and a half years of dealing with it, I would like to suggest to you that the facts as I have given them to you offer proof that children have in many cases become subservient to the system, or better said, the system in which we work has assumed importance greater than the child.

Let me ask this: Who are we all here for? The commonality of us all is our concern for the child who has been abused, neglected, abandoned, or molested by someone they love and trust, usually their family. Why then, have we allowed ourselves to get to this point?

Let's start with specialization.

We have encouraged specialists in our juvenile system. I think specialization has become a way of insulating ourselves from becoming too attached. It makes us less vulnerable, shortening the time that we are involved with the pain of the child and allowing us to move on. We can dart in and dart out and always have a safe place to hide our emotions. We can scoot away when it gets too tough and hand it to someone else. I think specialization has become a way of risk avoidance for social workers and others. This does not make sense because ours is a business in which we must take risks to go that extra mile when we have so much at stake, the life of a child. Specialization also implies greater education, greater expertise, more degrees, more prestige, but not necessarily greater personal service to children. In fact, it can be argued that more education and degrees lead to more layers of bureaucracy and frustration. What our system is lacking today is continuity and stability in the program for the child. This is true in many other areas as well—the child's attorney, medical personnel, therapists, judicial officers, and many more.

Today, however, I will focus on social workers because they are the first major participants in the child's vision of the system.

Some of you remember that it wasn't always this way. When I was a probation officer in San Joaquin County many years ago, one social worker per child, one social worker per family was the rule. That person knew and followed the case from beginning to end and provided the stability and solid base for our most vulnerable principal customers, the children we protect. It is true that the family is the customer too, but is far less vulnerable.

We need to return to that type of system. Even if we assume the greater complexity of the law now in the states and in the federal system, that does not excuse the facts as they are carried out. If legal mandates require specialists, then let them be advisors to the social worker on the case. As the system stands today, when one specialist is finished with the file, it is literally dropped on the desk of the next unit of specialists. There is no transition, no introduction to the child, no awareness of what is happening to the most important person in the process other than cryptic notes in the file. Everyone here knows how much gets lost in the translation of abbreviated notes. By the time the third social worker arrives on any given case, I am sure the child wonders why on earth they are asking that question again. "I already told five people that, didn't they understand, didn't they care enough to listen?" Can you imagine how confusing this whole process is to a child?

I often find myself issuing an order from the bench that the current social worker cannot leave the case until he or she hands the file personally to the next in line and discusses the case. This is also to avoid that ever-threatening problem of "no reasonable services" when cases get lost for months in the transition from one social worker to another.

Continued on page 24

What Is Wrong With This Story?
Continued from page 23

Our system has become too impersonal and has started to serve the people who work in it rather that the people we are paid to serve. Is this a unique happening? No, it has happened in other places. For example, the education system in this country is currently undergoing a national debate and finds itself defending against those who charge that it is too big, too bureaucratic, too technical, and too powerful and that the child is being left out because the system is serving educators, not children. Does that sound familiar?

Recently, over the last years, we saw the same thing in the field of victims of crime when a national debate argued that the system had gotten to the point that it only served judges, lawyers, and criminal defendants, and that the victims of crime, the people the system was designed to protect, had become mere pieces of evidence. The result was a victims movement and the enactment of victims of crime legislation in 50 states.

Can this happen in the area we are working in? I think it can, and I think the day is not far off. I think it is time to start a self-examination of what we do and how we conduct business before someone else does it for us. If we don't recognize the issues and change ourselves, the issues will be taken out of our hands and others will make the changes for us. The issues will be put back in the hands of legislators for a political decision as legislators are wont to do. Sometimes they have different motivations, not always the best interest of the child, but the best interest of the politician. I am suggesting that our first job is to reexamine the current policy of our social workers.

My proposal is one social worker per child, one social worker per family. Some will say that there is not enough funding for that. I say if it costs more but is a better system, then we have a duty to fight for the better system and fight for the funding. If it means more social workers, then we have to fight for more social workers.

Reported cases of child abuse have gone up 100 percent in my county in the last 10 years. I would hazard a guess that this is true for your counties also. Have we increased our resources to keep in line with the increased caseload? We have a sworn duty to the children we serve to give them the best that is in us and to keep our eye on the ball.

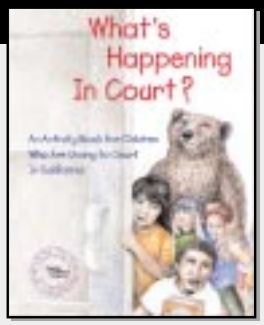
Let's not wake up to find that the abused child has fallen off our list of priorities. Let us keep our eye on the big picture, and let us together not be satisfied with a system that is less when it comes to the lives of our children.

Judge Haight, Superior Court Judge in Contra Costa County, has served on the bench for seven years. Prior to this, her wide experience in the law has included serving as Assistant Attorney General of the United States, delegate to the United Nations on four conferences, Chair of the President's Task Force on Victims of Crime, Deputy District Attorney in Alameda County, and probation officer. Judge Haight is a former member of the Judicial Council and is currently on the Family and Juvenile Law Advisory Committee.

DID YOU KNOW?

Did you know that *What's Happening in Court? An Activity Book for Children Going to Court in California* is available on the Web in both a downloadable format and an interactive version?

Check it out at:
www.courtinfo.ca.gov/programs/children.htm



The Hidden Victims

Judge Clay M. Smith,
Superior Court of Orange County

This article was published in the March 2000 issue of the Orange County Lawyer *magazine, beginning on page 34, and is reprinted with permission.*

Criminal conduct has many costs, some of which are obvious and some of which are not. Certainly, most people are generally aware of the economic cost of criminality to society. The mere monetary cost of operating our criminal justice and penal institutions is staggering. It is disheartening to contemplate the good that could be accomplished with those resources if they were devoted to other needs or left in the hands of taxpayers.

We are also keenly aware of the economic and emotional impact of criminal conduct on the victims of crime. Our legitimate concern for these victims has been enshrined in our constitution as follows:

> *It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer. (Cal. Const., art. I, § 28)*

In recent years California courts have made huge strides in effectively implementing this policy by imposing upon those convicted of crimes an enforceable obligation to make restitution to those injured by their conduct (see Cal. Pen. Code, § 1202.4). For example, during the period from July 1, 1998, through June 30, 1999, restitution payments to crime victims in Orange County alone exceeded $3 million. Significantly, these payments do not come from the public fisc, but rather from restitution orders imposed on the

Continued on page 25

The Hidden Victims

Continued from page 24

actual offender or from the restitution fund, which is underwritten by restitution fines imposed upon virtually every person convicted of a misdemeanor or felony.

Our systems are less capable, however, of offering redress for the emotional impact of crime on its victims. Tragically, many of the direct consequences of criminal conduct cannot be remedied by writing out a check. Our human institutions simply do not have the power to turn back the hands of time and restore the loss of a loved one, a battered body or psyche, or even a sense of security and well-being.

There is, however, another and less apparent category of "victims." This is a group upon which the cost of crime also lands with both feet. These victims are the innocent children, spouses, and other family members of criminals. A case I recently handled illustrates my point.

The case was *People v. Bradshaw.* Mr. Bradshaw was a single father working to support himself and his children, one of whom was a nine-year-old daughter named Tarah. At some point in his distant past he had suffered two felony convictions for serious or violent crimes. In other words, Mr. Bradshaw had two "strikes." In the current case, Mr. Bradshaw, who was receiving public assistance, had found a part-time, temporary job and did not report the income to the county welfare officials. As a result he received several hundred dollars in welfare benefits to which he was not entitled. Because the amount exceeded $400, the district attorney was prosecuting the case as a felony under Welfare and Institutions Code section 10980. The potential consequences to Mr. Bradshaw of any felony conviction: 25 years to life in state prison. The potential consequences to Tarah: unimaginable.

Shortly after Mr. Bradshaw's arraignment, a bail review hearing was held. Mr. Bradshaw was seeking an own-recognizance release so he could work and care for his children. His goal was to make reimbursement and attempt to persuade the district attorney to reduce the charge to a misdemeanor. The district attorney opposed such a release, because Mr. Bradshaw was technically a three-strikes defendant. The stakes at that hearing seemed remarkably higher than most bail review hearings. If released, Mr. Bradshaw might be able to make restitution, and if so, it would not be uncommon for the district attorney to reduce the charge to a misdemeanor, thereby eliminating three-strikes exposure. On the other hand, it would be extraordinary to release a three-strikes defendant on his own recognizance.

At the hearing, the courtroom was literally full of supporters of Mr. Bradshaw, many of whom were fellow members of his church. Many of his supporters had submitted letters describing Mr. Bradshaw's current life and his complete devotion to his young children. His attorney also gave a persuasive plea in his behalf. But the most indelible memory of that case is not the packed courtroom or the eloquent argument. Rather, it is the letter submitted to me by nine-year-old Tarah. It read:

> *My father has been gone for over a week and I miss him dearly. I am nine and I have been living with my father for four years now and they have been the best years of my life. He helps me with my homework and we say the Lord's Prayer before I go to bed. My father is a great father and I love him very much. My dad is a handsome man and I miss him sitting next to me and saying I love you Tarah and never forget that and he would say you're always with me in my heart. Please let my father come back please because I do not want this family to fall apart. I'm starting to feel really lonely without my dad being around. Did you take my dad because he had to pay rent for us? I am writing this letter because he means a lot to me. I hope you understand this letter. I really hope you do. PLEASE let my dad come back HOME.*

I occasionally take a copy of this letter out of a file and read it. I read it to remind myself of just how much fathers mean to daughters, mothers mean to sons, and so on. But it also reminds me of the unseen victims present in virtually every case. Tarah had very little in the way of material things, but she did have that which meant the most to her—her family. And now, her father's criminal conduct was threatening to take that from her too.

Ironically, the law does not consider Tarah to be a victim. Penal Code section 1202.4(k) defines a "victim" as a person or entity that is a "direct victim of a crime." The statutory requirement that the person be a "direct" victim has been interpreted to mean that the person (or entity) must be the "object of a crime" (*People v. Valdez* (1994) 24 Cal.App.4th 1194). Thus, while an insurance company (*People v. Foster* (1993) 14 Cal. App.4th 939) or a governmental agency (*People v. Crow* (1993) 6 Cal.App.4th 952) can be deemed a victim and entitled to restitution, Tarah cannot because she was not the object of the crime.

My purpose here is not to suggest that the laws pertaining to restitution be broadened to allow an offender's family to be compensated from the restitution fund, but rather to point out that there are often (or perhaps always) hidden victims of crime. They too are worthy of our concern.

Clay M. Smith is a judge of the Superior Court of California, County of Orange. His articles are frequently published in the Orange County Lawyer *magazine.*

Survey Results Released Examining Proceedings Involving Children and Families

Mr. Chris Belloli, Senior Analyst, AOC Research and Planning
Ms. Audrey Evje, CFCC Staff Attorney

Recently the Judicial Council released the results of a survey of proceedings involving children and families. The survey resulted from a 1998 Judicial Council request that the Family and Juvenile Law Advisory Committee draft a survey examining California's existing structure for resolving issues involving children and families. Survey results will guide the council in determining the best approaches for helping California to effectively structure its courts to handle proceedings involving children and families.

Staff from the Center for Families, Children & the Courts, with consultation from the Research and Planning Unit of the Administrative Office of the Courts (AOC), drafted a survey in July 1999 to collect information addressing the Judicial Council directives. The survey was pilot tested in August 1999. The final version of the survey was completed in December 1999 and distributed to the courts in January 2000. Forty-three surveys were returned from 41 counties; two counties each completed and returned an additional survey.

COURT-RELATED SERVICES

The survey first asked which court-related services the courts provide to children and families in the areas of family and juvenile law, respectively.

In family law, the vast majority of courts provide mediation and investigation services as well as general information (kiosks or handouts); services such as dependency investigation, child care, and substance abuse counseling are not widely offered in the family law area.

In juvenile law three services—on-site interpreters, Court Appointed Special Advocates, and on-site parking—are offered significantly more often than other services, though almost half of the courts do offer dependency investigation and substance abuse treatment.

Several services are either frequently offered in the areas of both family and juvenile law, or rarely provided in each of these areas. On-site interpreters, general information, and on-site parking are services offered frequently in both areas. Child care, separate areas for domestic violence cases, and legal information help centers are rarely provided services in either area.

JUDICIAL ASSIGNMENTS

The survey also addressed judicial assignments made by the trial court presiding judge. The results founds that by far the largest proportion of judicial officers are assigned to hear criminal matters (40 percent), followed by those assigned to civil cases (21 percent). To a lesser degree, judicial officers are assigned to hear family law cases (14 percent). A relatively small number of judicial officers are assigned to hear juvenile dependency (6 percent), juvenile delinquency (6 percent), probate (4 percent), and mental health cases (2 percent). Specifically, courts allocate judges more heavily in the areas of civil and criminal law than they do all judicial officers. For example, courts allocate 21 percent of all judicial officers to civil law, but they assign 24 percent of judges to civil cases. They allocate 40 percent of all judicial officers to criminal cases, but they assign 45 percent of judges to those cases. This is at the expense of family law, juvenile dependency, and juvenile delinquency, which all are assigned to a smaller proportion of judges than of judicial officers as a whole. Courts make assignments using a variety of assignment methods including:

- Judicial preference;
- Rotation system;
- Seniority; and
- Expertise of individual judicial officers.

A significant number of courts report that they have a need for additional judges to hear matters involving children and families, especially in the areas of family law, juvenile dependency, and juvenile delinquency. A need is also reported for additional commissioners in the family law area, and to a lesser degree in juvenile matters.

COORDINATED OR UNIFIED PROCEEDINGS

The survey specifically asked respondents questions related to coordination or unification of proceedings involving children and families. Seven courts out of 41 (17 percent) reported that they have a coordinated or unified family court. All of the counties that have a coordinated or unified family court indicated that the family court hears the following matters:

- Child custody and visitation
- Child support
- Domestic and family violence

Most of the counties that have a coordinated or unified family court indicated that the family court hears the following matters:

- Adoption
- Divorce
- Emancipation
- Juvenile delinquency
- Juvenile dependency
- Juvenile status offenses
- Legal separation
- Marriage annulment
- Paternity

The remaining matters are heard by only a small number of these seven unified or coordinated family courts.

- Criminal matters
- Guardianship
- Mental health
- Probate

Continued on page 27

Survey Results

Continued from page 26

CROSSOVER CASES

Ten courts out of 41 (24 percent) report having any staff serving in a case management/triage capacity. Respondents were also asked to estimate the number of cases where parties or children are also involved in other proceedings. Respondents in courts tracking the percentage of crossover cases report a higher rate of crossover than those that do not (See Table 1).

Respondents also listed which calendars are most likely to crossover (See Table 2).

BENEFITS OF COORDINATED/ UNIFIED FAMILY COURT

Judicial officers were also asked if they believed that coordination or unification of the family court system would be beneficial to their court system. Of the responding judicial officers, 73 percent believe that coordination or unification of the family court system would be beneficial to their court system, compared to 27 percent who believe it would not be beneficial; some examples of the judicial officer's explanations are presented below.

Not Beneficial:

- Case volume and method of calendaring make it impractical and difficult to justify.
- Only four judicial positions; seems better suited for mid-sized and large courts.
- We are a smaller court and don't need it. We already communicate with each other.
- Coordination or unification merely adds unnecessary rules, regulations, and protocols.

Beneficial:

- If a family can be brought to court on related issues in fewer hearings, then the court has less work. Litigants will also be best served as many issues overlap in family and juvenile proceedings.
- Coordination is a more effective way of handling any judicial workload.
- Having all parts of the family's business in the same court would give the judge greater insight into the causes of the family's problems and give indication for treatment.

The survey is available on our Web site at *www.courtinfo.ca.gov/programs/cfcc/resources/research_articles.html.*

You may also contact CFCC to receive a copy of the survey.

TABLE 1: ESTIMATES OF CROSSOVER CASES IN COURTS THAT DO AND DO NOT TRACK THEM

Percentage of Crossover Cases	Track	Do Not Track
Less than 5%	5%	19%
5–10%	26%	30%
10–20%	11%	17%
20–30%	21%	15%
30–40%	21%	9%
40–50%	5%	0%
Greater than 50%	11%	7%

TABLE 2: CALENDARS INVOLVED IN CROSSOVER PROCEEDINGS

	COURT ADMINISTRATOR *(n=39)*			JUDICIAL OFFICER *(n=52)*		
RANK	Calendar	#	%	Calendar	#	%
1	Domestic and family violence	30	77%	Domestic and family violence	41	79%
2	Juvenile dependency	26	67%	Juvenile dependency	35	67%
3	Divorce/dissolution	23	59%	Divorce/dissolution	30	58%
4	Child support	22	56%	Child custody/visitation	26	50%
5	Criminal	20	51%	Criminal	23	44%
6	Child custody/visitation	18	46%	Child support	22	42%
7	Juvenile delinquency	18	46%	Juvenile delinquency	19	37%
8	Paternity	12	31%	Paternity	15	29%
9	Guardianship	7	18%	Guardianship	9	17%
10	Adoption	4	10%	Drug Court	6	12%
11	Drug Court	3	8%	Adoption	4	8%
12	Probate	1	3%	Probate	1	2%
13	Emancipation	1	3%	Emancipation	0	0%

California Dependency Mediation Programs

HISTORY OF CHILD PROTECTION MEDIATION IN CALIFORNIA

Ms. Kim Harmon, Director of Dependency Mediation,
Superior Court of San Francisco County

Dependency (child protection) mediation is a process that promotes the full participation of families and other involved parties in making decisions for abused and neglected children. The mediator provides a confidential, neutral, and safe environment in which participants can have a candid discussion about what plan would best serve the child's needs. The process provides a significant opportunity for creating a teamwork approach to child welfare issues by encouraging a full and open exchange among those people whose actions most impact the child in question. The discussion is child centered and focuses, as much as possible, on the strengths that each party has to offer the child, what has been helpful to the minor in the past, and how the parties can move forward with a plan that includes specific and realistic steps.

Los Angeles County implemented the first such mediation program in California in 1983. In the early '90s the state Legislature established a mechanism for the funding and evaluation of pilot programs in five counties to determine the efficacy of mediation in child protection cases. The evaluation of these programs was completed in November of 1995. Based on the uniform success of the five pilot counties, California has seen more than half of its counties implement dependency mediation programs.

The pilot program evaluation found the following differences in the outcomes of those cases resolved through mediation, as compared with those resolved through litigation:

1. A higher rate of specificity in visitation plans;
2. A higher rate of children placed with relatives or noncustodial parents;
3. A higher rate of uncontested 6- and 12-month reviews following a mediated settlement at disposition;
4. Shorter stays in foster care for children;
5. A higher rate of parent satisfaction with experiences at the court; and additionally,
6. The resolution of all issues in the vast majority of cases referred to mediation. (In San Francisco County, for example, the full settlement rate ranges from 82 to 85 percent, with another 10 percent of the cases narrowing triable issues by settling some of the disputed ones).

An outgrowth of this high rate of settlement is that permanency for children can be achieved more expeditiously by avoiding the time involved in setting and having contested hearings and trials.

AOC STANDARDS OF PRACTICE FOR DEPENDENCY MEDIATION

Despite their differing programmatic approaches to providing dependency mediation services, those counties that have implemented mediation programs since the 1995 study have validated the findings of that evaluation. Based on that collective experience and the tremendous growth in California programs, the Juvenile Dependency Court Mediation Association (JDCMA), the statewide organization of dependency mediation programs, thought it would be useful to establish minimum standards of practice in California. Kim Harmon (San Francisco), Elizabeth Dunn (Alameda), and Steve Baron (Santa Clara), on behalf of JDCMA, drafted the standards of practice adopted by the Judicial Council as section 24.6 of the California Standards of Judicial Administration, effective January 1, 2001.

These practice standards institutionalize the values shared by child protection mediation programs, as enumerated below, while allowing each county the ability to implement programs that reflect the needs of their particular community.

■ **Every dependency mediation program:**

1. Focuses all participants on the child's best interest;
2. Provides safety for all participants by including a specific protocol to address the needs of those families that have experienced family violence;
3. Maintains strict confidentiality unless a child's or adult's safety is at risk;
4. Recognizes the importance of including parents in developing the plans for their children and family; and
5. Creates an environment that promotes teamwork among the participants.

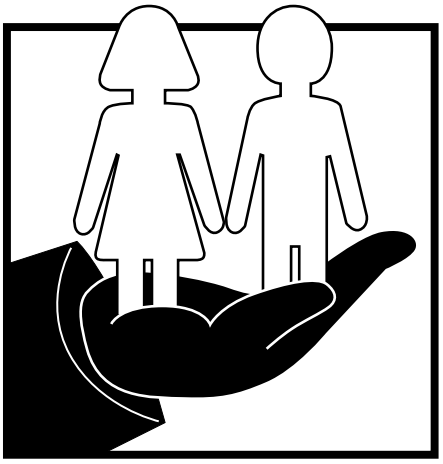
■ **Each county, among other procedures, has its own protocols on:**

1. What kinds of issues may be referred to mediation;
2. Who may, or may not, participate in the mediation;
3. How long the process lasts; and
4. Whether or not the parties may be ordered to participate in mediation.

SAN FRANCISCO COUNTY PROGRAM: BRIEF DESCRIPTION

In San Francisco County, for example, the court refers cases to mediation that involve any issues that might arise during the life of a dependency case, from pre-jurisdiction to the termination of parental rights. Our mediations include the parents, the child welfare worker currently assigned to the case, all counsel, and minors (if the issue and the maturity of the minor make it appropriate). Other potential participants include CASAs, caretakers, relatives, service providers (including therapists), and school representatives where appropriate.

Continued on page 29



California Dependency Mediation
Continued from page 28

Our mediations last from two to three hours and, generally, need only one session. However, we can continue the mediation if all the parties think further discussion would be of benefit. Oftentimes in cases that involve transitions, such as a change from supervised to unsupervised visits or a transition back home for a child, a future mediation session will be scheduled in order to take a step-by-step look at how the transitional plan is working.

Agreements are committed to in writing and are read to all participants to ensure that they accurately reflect the participants' intent. We then proceed immediately to court and request that a particular agreement be entered as an order of the court, where the agreement is put on the record and placed in the court file. Every participant leaves the court with a copy of the written agreement. In the event that there are unresolved issues, the court is informed only that a hearing or trial date must be set; no information is given about what may have impeded resolution.

Our mediators generally work in pairs. Our professional mediators have either a legal or clinical degree, coupled with extensive mediation experience and knowledge of the issues inherent to child abuse and neglect cases, including, but not limited to, domestic violence, substance abuse, and mental health issues.

San Francisco is the only program in the country that we are aware of that includes a paraprofessional mediator whose children were once dependents of the court. The paraprofessional's responsibilities include conducting mediations with one of the professional mediators and presenting information to parents about the mediation program and the court dependency process.

CONCLUSION

The protocols of dependency mediation programs vary widely. However, the data indicates that success is generally uniform across the board. The outcomes for children whose families have participated in mediation appear to be substantially better than those who have not, as measured by the type of placement, the length of placement, and the specificity of visitation plans.

Anecdotal information indicates that parents tend to become more involved in services and in the lives of their children following their involvement in the decision-making process provided by mediation. And, finally, the court saves a tremendous amount of time and money by virtue of the large number of cases that resolve all contested issues through mediation, obviating the need for trial.

Kim Harmon is the Director of the Dependency Mediation Program of the San Francisco Unified Family Court. She is a long-time member of the Juvenile Dependency Court Mediation Association. She is an attorney who practiced family law prior to her work as a mediator. She has mediated a wide range of cases over the last 20 years and has been involved in the San Francisco Dependency Mediation Program since its inception in 1995.

The author can be reached at the number and e-mail address below. She would be pleased to answer questions and discuss any issues related to dependency mediation programs.

415-551-3912
Dependency Mediation Program
400 McAllister Street, Suite 402
San Francisco, CA 94102
kharmon@sftc.org

Center for Families, Children & the Courts

455 Golden Gate Avenue
San Francisco, California
94102-3660
Phone: 415-865-7739
Fax: 415-865-7217
E-mail: cfcc@jud.ca.gov
Web site: *www.courtinfo.ca.gov/programs/cfcc*

Center for Families, Children & the Courts

Update

August 2001
Volume II, no. 2

Delinquency Case Summaries

CASES PUBLISHED FROM MARCH 1, 2001, TO JULY 5, 2001

***Vidal Bravo v. Superior Court of Kern County* (2001) 90 Cal.App.4th 88 [108 Cal.Rptr.2d 514]. Court of Appeal, Fifth District.**

After a criminal preliminary hearing, the district attorney filed a four count information alleging that the child and two co-defendants had violated Penal Code section 187(a) (murder). The first count alleged that the child murdered the victim intentionally, in furtherance and for the benefit of a criminal street gang, and that he was 16 years of age. The second and third counts charged the child with the attempted murders of two other individuals and also alleged firearm, drive-by shooting, and criminal street gang charges, as well as eligibility for direct filing in adult court. The fourth count alleged that the child had unlawfully carried a handgun for the benefit of and in association with a criminal street gang. Also, the child had committed a felony at age 14 and was found to be a ward at that time. The child appealed under Penal Code section 995, alleging that Proposition 21 (a voter initiative that amended Welfare and Institutions Code section 707(d) to provide the district attorney with the discretion to file certain criminal charges against youths in either adult or juvenile court): (1) violates the single-subject rule; (2) violates the separation of powers doctrine because the executive branch improperly wields judicial power; (3) improperly altered the text of the statute; and (4) violates equal protection laws. A child co-defendant also joined the petition.

The Court of Appeal rejected the challenges and denied the petitions for writ of prohibition. The appellate court first recognized that it was not the first court to address the constitutionality of Proposition 21, and it rejected the decision of the Fourth District in *Manduley v. Superior Court* (2001) 86 Cal.App.4th 1198, in which the proposition was deemed unconstitutional. The Fifth District determined that Prop. 21 did not violate the single-subject rule. The child in the instant case contended that the proposition violated article II, section 8(d) of California's Constitution because it embraced more than "one subject." A proposition complies with the single-subject rule if its parts are "reasonably germane" to each other. The petitioners did not point to any portion of the proposition that could not be determined as reasonably germane to the proposition's goal of reducing juvenile and gang-related crime. The appellate court noted that just because the proposition "shifts gears," that does not constitute constitutional invalidity. The appellate court determined that even the provisions that amended portions of the three-strikes law were germane and not intended to trick the voters into goals unrelated to the initiative. Also, the initiative process is a power reserved by the People, not granted to them, and the court must preserve this power if doubts can reasonably be resolved.

The bulk of the opinion in this case is dedicated to a separation of powers discussion. The appellate court noted that the legislative branch has the responsibility and power to define criminal charges, the executive branch decides what crime to charge, and the judicial branch imposes sentence within the legislatively determined limits for a particular crime. The separation of powers doctrine mandates that a statute may not constitutionally require the consent of one branch for the proper exercise of another branch's power, unless it is specified by the federal Constitution. The amended section 707(d) permits a prosecutor to either directly file charges against juvenile offenders in adult court or to file charges in juvenile court. Prior to the passage of Prop. 21, the prosecutor would bring proceedings in juvenile court. Under no circumstances was the prosecutor given the discretion to unilaterally decide whether or not to proceed in adult court in a case involving a juvenile offender. The petitioners argue that the removal of the option for the juvenile court to sentence a child under juvenile laws violates the separation of powers doctrine because sentencing is a judicial function. The People argue that because the discretionary filing decision is made before the charges are brought before the court, it is a function of the executive branch.

The appellate court concluded that section 707(d) does not violate the separation of powers doctrine. The appellate court noted that "there is no constitutional right to the juvenile justice system" and the electorate should be able to place reasonable limitations on that system. The limitation is reasonable because it is not clear if the power provided in section 707(d) is a judicial or executive function. The appellate court noted that it must not interfere unless a statute clearly and unmistakably appears to be unconstitutional. Because each of the branches has exercised all three kinds of powers, and because the juvenile justice system is statutory in nature, the statute is not violative of the federal Constitution. The appellate court distinguished a line of relevant cases that the petitioners cited, because in those cases, the challenged statutory provision purported to give the prosecutor the right to veto a decision made by a court after the criminal charges had already been filed. (See *People v. Tenorio* (1970) 3 Cal.3d 89; *People v. Navarro*

Continued on page 31

Delinquency Case Summaries
Continued from page 30

(1972) 7 Cal.3d 248; *Esteybar v. Municipal Court* (1971) 5 Cal.3d 119). Section 707(d) does not violate the separation of powers doctrine simply because it *affects* sentencing. The Legislature and the People by initiative could eliminate the juvenile courts, lower the age of "juvenile" to 14, or mandate that certain charges be brought in adult court; therefore the conclusion that prosecutor has discretion to charge "legislatively dictated crimes under certain legislatively dictated circumstances in adult court" should not be unconstitutional. The separation of powers doctrine is established to protect individual liberty by preventing the concentration of powers in one branch of government, and section 707(d) does not offend this purpose.

The appellate court also found that the proposition's text was not unconstitutionally altered. The petitioners contended that the proposition circulated for the voters' signature differed from the proposition that appeared on the ballot. The petitioners failed to provide authority for this constitutional defect, and the appellate court agreed with the People that the variation was due to legislative revisions impacted by the proposition between the time of circulation and election date. The appellate court also held that the proposition did not violate equal protection principles. Because all juveniles are subject to the prosecutor's discretion and the potential for abuse (holding unjustifiable standards based on race, religion, or other arbitrary classifications) is no greater than in other charging decisions, the provision does not violate equal protection. The appellate court upheld the constitutionality of Prop. 21, section 26, and denied the petitions for writs of prohibition.

***In re Walter S.* (2001) 89 Cal.App.4th 946 [107 Cal.Rptr.2d 752]. Court of Appeal, Second District, Division 2.**

The juvenile court adjudged a youth a ward of the court under Welfare and Institutions Code section 602 for possessing a sawed-off shotgun (Pen. Code, § 12020(a)(1)) for the benefit of or in association with a criminal street gang with the intent to promote, further, or assist in criminal conduct by gang members (Pen. Code, § 186.22(b)(1)). Two male youths pointed a gun at and ordered a victim out of his car. The victim's wallet and car were taken. Later, the youth got into the car to go cruising with many of his gang members. This gang has about 200 members and is involved in many violent crimes including robberies, murders, and carjackings. Some of the gang members got out of the victim's car, and the youth in the instant case and the driver were seen by a police officer. The officer made a U-turn to stop the car because the youths were not wearing seatbelts. The driver sped through a stop sign, stopped the car, and the two youths ran out of the car. The officer noticed a sawed-off shotgun on the passenger's side, which was there prior to the youth getting into the car. The gun did not belong to the youth in the instant case. The safety was off the gun and there were two ".00 shotgun rounds," which are extremely powerful, in the chamber. The youth was arrested, and he admitted to knowing that the car was taken by his fellow gang members. The juvenile court declared the youth a ward of the court for possessing a shotgun and for acting in furtherance of a gang's criminal conduct. The youth appealed, contending that: (1) there was insufficient evidence to support a finding that the youth possessed a shotgun with the specific intent to promote criminal conduct by a gang; (2) Penal Code section 186.32(a)(10)(C), requiring that a juvenile registering as a gang offender must give "any information that may be required by the law enforcement agency," is unconstitutionally vague; (3) this Penal Code provision is also overbroad; (4) the registration requirement constitutes cruel and unusual punishment; (5) the registration order and use of the gang enhancement to calculate the maximum period of confinement is multiple punishment in violation of Penal Code section 654; and (6) the juvenile court erred in ordering the youth to pay restitution to the victim.

The Court of Appeal affirmed the decision of the juvenile court, noting, however, that the juvenile court erred in ordering the youth to pay restitution to the victim. The appellate court found that there was substantial evidence to find that the youth had possessed the gun to promote, further, and assist the criminal conduct of gang members. The youth was holding the gun between his legs while riding around in a car that he knew had been carjacked earlier that day.

Penal Code section 186.32(a)(10)(C), added by Proposition 21, provides that when a juvenile registers as a gang offender, there must be a "written statement signed by the juvenile giving any information that may be required by the law enforcement agency, submitted to the law enforcement agency." The youth argued that the requirement of "any" information to be provided to the law enforcement agency is vague and may permit arbitrary and discriminatory enforcement. The appellate court compared the statute to other registration statutes for sex offenders, arsonists, and narcotics offenders. The appellate court interpreted the information described in section 186.32(a)(10)(C) as information necessary to locate the juvenile, such as his or her full name, aliases, date of birth, residence, description and license plate number of any car the person drives, and any information regarding employment. Construed this way, the

Continued on page 32

Delinquency Case Summaries

Continued from page 31

statute is not subject to any arbitrary or discriminatory enforcement. The youth also argued that the statute is overbroad as it infringes on the First Amendment right to freedom of association and the right of privacy, and it threatens the privilege against self-incrimination. The appellate court found that the statute did not have any of these defects.

Article I, section 17 of the California Constitution prohibits cruel and unusual punishment if it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity. Three techniques to determine if a punishment is cruel or unusual are: (1) an examination of the nature of the offense and the offender; (2) a comparison of the challenged penalty with punishments for more serious offenses; and (3) a comparison of the challenged penalty with punishments for the same offense in other jurisdictions. The youth in this case was in possession of a sawed-off shotgun with the safety off and two extremely powerful rounds in the chamber, riding with fellow gang members, in a car he knew to have been taken during a carjacking. The appellate court found that the requirement for the youth to register as a gang offender does not shock the conscience or offend notions of human dignity.

Penal Code section 654 provides that an act or omission that is punishable by different provisions of law must be punished for the longest potential term of imprisonment, but must not be punished under more than one provision. Penal Code section 186.30 was determined by the appellate court to be an exception to section 654 because under Proposition 21 (where gang-related felonies are subject to severe penalties), the voters intended the registration requirement to be in addition to the imposition of enhancements for gang-related offenses. Therefore, the appellate court held that any person convicted of, or with a wardship petition sustained for, committing a crime with an enhancement allegation under Penal Code section 186.22(b) found to be true, must register as a gang offender under section 186.30 as an exception to Penal Code section 654.

Welfare and Institutions Code section 730.6(a)(1) requires that a juvenile offender pay restitution to a victim who has incurred any economic loss due to the offender's conduct. Because the youth in this case was not charged with stealing the victim's car or with committing any other crime against the victim, the juvenile court erred in ordering him to pay restitution. The appellate court affirmed the wardship order and modified the dispositional order to strike the restitution payment requirement.

In re Marcus T. **(2001) 89 Cal.App.4th 468 [107 Cal.Rptr.2d 451]. Court of Appeal, Second District, Division 4.**

The juvenile court declared a child a ward of the court under Welfare and Institutions Code section 602. A uniformed officer for the school district saw the child smoking by the basketball court near the local high school. The officer asked the child what he was doing and the child replied that he could do whatever he wanted to do (in more vulgar terms). The officer placed the child in a wrist lock and began walking him to the dean's office. The child pulled away, clenched his fists, and said that no one grabs him like that, that he was from a certain gang, and that he was going to mess the officer up and take the officer out. The officer feared that the child was going to punch him, so he grabbed and tossed the child to ground and then handcuffed him. The child was charged with violating Penal Code sections 71 (threatening a public officer) and 422 (making a terrorist threat). The child appealed, arguing that the juvenile court erred because the terrorist threat under section 422 was a lesser included offense of section 71 and when two crimes are based upon the commission of the same act, and one is a lesser and necessarily included offense of the other, then the offender may not be found guilty of both.

The Court of Appeal concluded that Penal Code section 422 was not lesser included offense of section 71, but in fact, that the opposite was true. Both Penal Code sections 71 and 422 have four primary components: criminal intent, a victim, a threat, and a reaction from the victim. The victim in section 422 may be any person, but the victim in section 71 must be an officer or employee of any public or private educational institution or any public officer or employee. Also, the victim described in section 422 must be in fear of his or her own or their family's safety, whereas the victim in section 71 need not experience any fear. Therefore, section 422 is not a necessarily included offense of section 71, because the former can be committed without committing the latter. The appellate court proceeded to analyze whether or not the child's threat to the police officer in violation of section 71 was a lesser included offense of section 422. The appellate court raised the issue of whether the criminal conduct prohibited in section 422 encompassed the criminal conduct prohibited in section 71. The elements of the victim, the criminal intent, and the victim's reaction described in section 71 are clearly encompassed in section 422. In this case, the officer was one victim in two roles (as the broad "person" in section 422 and as the officer in section 71); thus the intent to threaten an officer under section 71 is encompassed in the description of threat under section 422, and the lower-level reaction under section 71 is encompassed under section 422.

The only element of section 71 not encompassed in section 422 is the threat itself, which, under section 71, is to inflict an unlawful injury upon the person and property of the victim. In this case, the People made no attempt

Continued on page 33

Delinquency Case Summaries

Continued from page 32

to prove that the child threatened the officer's property. The appellate court questioned if the child should be found as having committed two felonies simply because the People alleged but did not prove that the child threatened the officer's property. The appellate court asked the parties if it would be appropriate to direct the juvenile court to amend the complaint and strike the words "and property" from the petition. The child argued that an accusatory pleading may be amended at any stage of juvenile proceedings. The appellate court agreed with this argument and directed the juvenile court to delete the unproved allegation concerning the threat to property and amend the petition to reflect that the child committed one felony, not two. The appellate court remanded to the juvenile court to strike the finding that the child violated Penal Code section 71 and to add a statement to the record explaining the reason for the amendment.

In re Trevor W. **(2001) 88 Cal.App.4th 833 [106 Cal.Rptr.2d 169]. Court of Appeal, Fourth District, Division 2.**

The juvenile court sustained allegations of grand theft against a child and placed him on probation under Welfare and Institutions Code section 725(a) on condition that he serve 210 days in juvenile hall and make restitution. The court did not adjudge the child a ward of the court. The child appealed on the ground that the court lacked the authority to remove him from his parents and order him to serve time in juvenile hall without adjudging him a ward of the court.

The Court of Appeal, in this partially published opinion, reversed the decision of the juvenile court. Construing several sections of the Welfare and Institutions Code together, the court held that no authority exists for juvenile courts to impose confinement without adjudging a child a ward of the court. Section 725(a), relied upon by the juvenile court in this case, authorizes the juvenile court to place a child coming under its jurisdiction on probation without declaring him a ward of the court. Section 725(b) authorizes the juvenile court to adjudge the child a ward of the court. In this case, the juvenile court chose not to so adjudge the child. The only sections that expressly authorize the imposition of confinement, including juvenile hall time, are sections 726 and 730. The terms of sections 726 and 730 limit their application to children adjudged wards of the state. On the other hand, no code section expressly authorizes the juvenile court to impose confinement on a nonward as a condition of probation. Construing the statute in favor of the accused, the appellate court ruled that the code as a whole did not authorize the juvenile court to condition nonwardship probation on juvenile hall time. If a juvenile court wishes to condition probation on juvenile hall time, it must proceed under sections 725(b), 726, and 730. The appellate court therefore reversed the juvenile court's decision.

In re Luke W. **(2001) 88 Cal.App.4th 650 [105 Cal.Rptr.2d 905]. Court of Appeal, First District, Division 5.**

The juvenile court sustained a supplemental section 602 petition alleging that a child had possessed a concealed dirk or dagger in violation of Penal Code section 12020(a)(4) ("dirk" or "dagger" is defined in section 12020(c)(24)). The child had been declared a ward of the court and placed on probation based on a petition alleging that he had possessed marijuana for sale. Four months later, a police officer saw him in the company of a man known to be on parole. The officer searched the child and found a small rectangular object. It resembled a thick credit card or a small cassette tape and contained ridges and grips. By pulling on one of the grips while holding the main portion of the card with one's other hand, one could extract a small knife with a blade two and three-fourths inches long. The child appealed on the ground that this object is excluded from the statutory definition of a dirk or dagger.

The appellate court reversed the decision of the juvenile court. Looking at the statutory language and legislative history, the appellate court interpreted Penal Code section 12020 to exclude from its definition of a dirk or dagger folding knives and pocketknives unless these types of knives are locked in the open position and ready to use. The court then examined the object in question and determined that, because the blade was contained in the casing and required two hands to extract, the object fell outside the statutory definition of a dirk or dagger. The appellate court therefore reversed the juvenile court's decision.

In re Do Kyung K. **(2001) 88 Cal.App.4th 583 [106 Cal.Rptr.2d 31]. Court of Appeal, Sixth District.**

The juvenile court placed a child on probation without wardship (Welf. & Inst. Code § 725(a)) for violating Penal Code section 626.10(a) (possession of "a razor with an unguarded blade" on school grounds). After the child had consented, school authorities searched his wallet. As they searched, a "razor blade" fell out of the wallet. The blade measured approximately one by three-fourths inch and was "slightly rusty." The sharp edge of the blade had no guard on it. The child appealed.

The Court of Appeal, after holding that Welfare and Institutions Code section 800(c) did not preclude the child from appealing, reversed the decision of the juvenile court. Welfare and Institutions Code section 800 authorizes appeals from certain substantive sections of the code. Section 800(c) states: "Nothing contained in this section shall be construed to authorize an appeal from an order granting probation." The appellate court interpreted section 800 as a whole to regulate only appeals by "the People." Thus, the restriction in

Continued on page 34

Delinquency Case Summaries

Continued from page 33

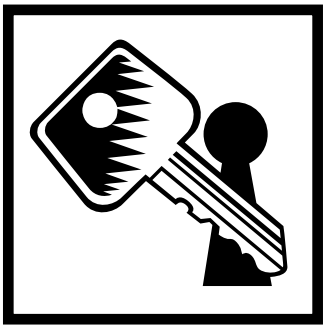
section 800(c) does not preclude appeals by children from orders placing them on probation.

Turning to the merits, the appellate court closely analyzed the prohibition against possessing a "razor with an unguarded blade" on school grounds. It consulted the statutory language, dictionary definitions, and the impact of other statutory provisions to decide that the razor prohibition in Penal Code section 626.10 does not apply to razor blades alone. The appellate court therefore reversed the decision of the juvenile court. The appellate court also stated that the Legislature should promptly address the issue of razor blades on school grounds.

***In re Elizabeth G.* (2001) 88 Cal.App.4th 496 [105 Cal.Rptr.2d 811]. Court of Appeal, Sixth District.**

The juvenile court sustained a Welfare and Institutions Code section 602 petition alleging that the child committed two violations of Penal Code section 32 (accessory after the fact) and zthree violations of Penal Code section 12101(a)(1) (possession of a firearm). In the immediate aftermath of a shooting, police stopped a vehicle matching the description of a vehicle seen near the scene. The driver, the child's brother, stated that he had just dropped someone off near his residence. The police went to the residence to secure it while they applied for a warrant. The child, who lived at the residence, was upset that police entered the home without a warrant. She made several requests to do laundry. The police refused these requests and found them unusual because the child had apparently been asleep before they had arrived. The child left and returned. She then gathered some belongings, including her laundry basket, and asked if she could take it with her out of the house. The police asked to inspect the basket. The child showed them some clothes in it. An officer asked to examine it himself, having noticed a towel that remained in the bottom of the basket. As he reached for the basket, the child grabbed it and a tug of war ensued. The officer noted that the basket felt heavier than he had expected. The child eventually told the officer that she would leave the basket there. She then left the residence.

Another officer arrived with a warrant shortly thereafter. The police then searched the basket and found three handguns matching the caliber of the guns used in the shooting. After the People filed the section 602 petition, the child moved to suppress the evidence obtained from the seizure of her home and from the execution of the search warrant. In a written motion, the child's counsel argued that probable cause to support the search warrant did not exist. He also argued that no probable cause or exigent circumstances justified the seizure of the residence. At the hearing on the motion, the child's counsel addressed the search warrant issue and submitted the matter on the basis of the written motion. The juvenile court denied the motion to suppress. It found that the police acted reasonably when they stopped the vehicle and when they secured the residence. At the jurisdictional hearing, the juvenile court found the allegations in the petition to be true. At the dispositional hearing, the juvenile court adjudged the child a ward of the court and placed her on probation. The child appealed, contending that her counsel ineffectively assisted her by failing to contend at oral argument that the warrantless entry into her home was not justified by exigent circumstances.



The Court of Appeal affirmed the juvenile court's decision. To establish ineffective assistance of counsel, the child had to show that her counsel failed to act as a reasonably competent counsel would be expected to do and that she suffered prejudice because of her counsel's incompetence. The court examined only the prejudice issue. The child's counsel did contend in his written motion that exigent circumstances did not exist, but he did not present the issue at oral argument. The appellate court found that, even if he had orally presented the argument, it was not reasonably probable that the court would have reached a result more favorable to the child. To reach this conclusion, the court used a four-part analysis of the permissibility of warrantless seizures derived from *Illinois v. McArthur* (2001) 531 U.S. 326, 121 S.Ct. 946. First, the court decided that, based on the observations of the vehicle and the statements of the driver, the police had probable cause to believe that the residence contained evidence of a crime. Second, the appellate court found that the police had good reason to fear that the evidence would be removed before they could return with a warrant. Third, the police did not search the residence or arrest its occupants. They simply monitored the occupants and prevented them from removing articles that could have contained evidence. Fourth, the seizure lasted no longer than necessary. The police entered the home after midnight and returned with a warrant around 5:30 a.m. Because all four factors of this analysis were satisfied, the appellate court found that exigent circumstances did exist. Therefore, even if the child's counsel had raised the issue at oral argument, she probably would have lost. The appellate court thus rejected the child's ineffective assistance of counsel claim.

Continued on page 35

Delinquency Case Summaries
Continued from page 34

***In re Ivan J.* (2001) 88 Cal.App.4th 27 [105 Cal.Rptr.2d 382]. Court of Appeal, Second District, Division 6.**

The juvenile court adjudged a child a ward of the court and placed him on probation for violating Penal Code section 148.9(a) (falsely identifying himself to a peace officer). The child, 17 years old at the time, was approached by a sheriff's deputy while standing outside smoking a cigarette. The deputy detained him because he suspected that the child was violating Penal Code section 308 (possession of tobacco by a minor). The deputy asked the child for his name and age. The child gave his true name but, to avoid a citation for possession of tobacco, gave a false birth date. The juvenile court held that giving a false birth date, even when accompanied by a true name, is sufficient to violate Penal Code section 148.9(a).

The Court of Appeal affirmed the decision of the juvenile court. The court addressed the issue whether the child "'falsely represent[ed] or identifie[d] himself … as a fictitious person' [Pen. Code, § 148.9(a)] when he lied about his year of birth." The child argued that, because he gave the deputy his correct name, he did not falsely identify himself. The appellate court determined that the Legislature intended to use a broad conception of identification when it enacted the statute. This conception encompasses more than just a person's name. The Court of Appeal described a date of birth as "one of the core characteristics that comprise a person's identity." Thus, someone can identify oneself as a fictitious person under section 148.9(a) by giving a fictitious birth date as well as by giving a fictitious name. The appellate court emphasized that, during an arrest or detention, "an accurate date of birth is a critical piece of information." Giving a false date of birth may allow a person to escape the consequences of his or her illegal actions. The appellate court therefore affirmed the juvenile court's decision that giving a false date of birth does violate Penal Code section 148.9(a).

***In re Ricky T.* (2001) 87 Cal.App.4th 1132 [105 Cal.Rptr.2d 165]. Court of Appeal, First District, Division 4.**

The juvenile court adjudged a child a ward of the court for violating Penal Code section 422 (making a terrorist threat). The 16-year-old child had left the classroom to use the bathroom. When he returned the door was locked. The teacher opened the door and hit the child on the head. The youth was angry and said to the teacher, "I'm going to get you." The teacher, feeling physically threatened, sent him to the office. The youth did not make any further act of aggression or any specific threats. An officer interviewed the youth the following day, and the youth admitted to "getting in the teacher's face" and saying he would "kick the teacher's ass," but he claimed he did not mean to sound threatening. The youth understood his actions were not appropriate and apologized. He never made any physical gestures toward the teacher. The juvenile court sustained the Welfare and Institutions Code 602 petition. The youth appealed, claiming that there was insufficient evidence for the court to find that he had violated Penal Code section 422.

The Court of Appeal reversed the decision of the juvenile court. In order to sustain a finding that a terrorist threat was made in violation of Penal Code section 422, the People were required to show that: (1) the youth willfully threatened to commit a crime that would result in death or bodily injury; (2) the threat was made with the specific intent to be taken as a threat; (3) the threat on its face was unequivocal, unconditional, immediate, and specific enough to convey a gravity of purpose and an immediate prospect of execution of the threat; and (4) the threat caused the person threatened to have reasonably sustained fear for their own safety. The youth conceded the first two elements, but argued that there was insufficient evidence to establish the latter two elements. The appellate court noted that threats are judged in context and that the People relied too much on the words spoken. There was no immediacy to the threat as the police were not called until the next day. There also was no evidence that the youth and the teacher had any prior history of disagreements or had expressed offensive remarks to each other. The appellate court stated that, in this case, the words were not accompanied by any physical violence such as pushing or shoving. The court noted, "If surrounding circumstances within the meaning of section 422 can show whether a terrorist threat was made, absence of circumstances can also show that a terrorist threat was not made within the meaning of section 422." In this case there was no evidence of any circumstances after the youth's "threats" that would further a terrorist threat finding.

Also, the term "sustained fear" was interpreted by the appellate court to mean "time that extends beyond what is momentary, fleeting, or transitory." There was no evidence in this case that the fear the teacher had was more than fleeting or transitory. The youth went to the school office and returned the next day to meet the officer; he did not take advantage of the teacher's fear. The youth's statements were an emotional response to an incident rather than a terrorist threat that induced sustained fear. Students who are confrontational or misbehave should be taught a lesson, "but not, as in this case, a penal one." The appellate court reversed the decision of the juvenile court.

Continued on page 36

Delinquency Case Summaries
Continued from page 35

***In re Ian C.* (2001) 87 Cal.App.4th 856 [104 Cal.Rptr.2d 854]. Court of Appeal, First District, Division 1.**

The juvenile court determined that a child had violated Health and Safety Code section 11359 (possession of marijuana for sale). After midnight, an officer stopped a group of seven youths loitering in an area known for drug trafficking. The youths were detained for violating the city's curfew regulation that prohibits children from being in public places at night (San Jose Mun. Code, § 10.28.110(b)). The youths were taken to the curfew center, or a processing center, where typically officers can learn a child's biographical information and who the child lives with. Also, the officers could attempt to contact a child's parents for them to come to the center and take custody of the child.

The officer searched the youth at the detention center, complying with the policy that all children are searched to ensure a safe environment. The officer noticed a suspicious bulge in the youth's sock and removed four bags of marijuana as well as $515 found in the youth's shoe. The youth waived his right to remain silent and told the police that the five pages on his beeper were from persons looking for marijuana. The wardship petition charged the youth with possession of marijuana for sale. The youth moved to suppress the evidence, claiming that the search was unreasonable for a curfew violation. The juvenile court denied the youth's motion and found that the youth possessed the drugs for sale. The child was adjudged a ward and placed on home probation. The youth appealed.

The Court of Appeal affirmed the decision of the juvenile court. In this case, police properly detained the youth for violating curfew. The police may hold a child in temporary custody until a parent or responsible adult arrives to take the child. The police are not required to transport the child home or to await the parent's arrival at the public place where the child was originally detained. Section 626 of the Welfare and Institutions Code states that the police who apprehend a curfew violator must give preference to the alternative that least restricts the child's freedom of movement and still is compatible with the best interest of the child and community. The police may therefore transport children to a curfew center, police station, or other facility where they can wait for their parents or another responsible adult.

The appellate court also determined that that the police officer properly searched the youth. The youth was taken into temporary custody, which is equivalent to an arrest. The search in this case can be characterized as a search incident to arrest even if the officer does not intend to book the youth. Because the justification for the search incident to arrest or temporary custody is for the safety of the officers and other detainees, the officer in this case reasonably searched the youth before placing him in the curfew center with other youths. (See *In re Charles C.* (1999) 76 Cal.App.4th 420.) The appellate court rejected the child's analogy to *In re Justin B.* (1999) 69 Cal.App.4th 879, because in that case the child was subjected to an interrogation about auto burglaries after being picked up for a curfew violation. The youth in this case was not subjected to an interrogation and was taken to the curfew center to await the location of a parent or responsible adult to effectuate the child's release. The appellate court determined that the detention and search were reasonable and therefore affirmed the decision of the juvenile court.

Dependency Case Summaries

CASES PUBLISHED FROM MARCH 1, 2001, TO JULY 5, 2001

***In re Zeth S.* (2001) 90 Cal.App.4th 107 [108 Cal.Rptr.2d 527]. Court of Appeal, Fourth District, Division 3.**

The juvenile court terminated a mother's parental rights under Welfare and Institutions Code section 366.26. At the time of the section 366.26 hearing, the child's attorney was adamantly in favor of the termination of parental rights. The attorney assured the court that the child's maternal grandfather was ready to adopt the two-year-old baby. On appeal, the child's appellate counsel (different from the child's trial counsel) supported the mother and indicated that the grandfather had been pressured into consenting to adoption and would rather take on the role of the child's legal guardian. The child's appellate counsel noted the strong bond between the child and mother and that the mother was continuing to assume primary parental responsibilities.

The Court of Appeal reversed the juvenile court's decision to terminate the mother's parental rights. The appellate court noted that even without the allegation that the child's grandfather was pressured into agreeing to adoption, the mother did present strong evidence that she fit within the Welfare and Institutions Code section 366.26 (c)(1)(A) exception to the termination of parental rights. There was uncontroverted evidence that the mother continued to be the child's primary caregiver in her father's home. The county counsel argued that because there need not

Continued on page 37

Dependency Case Summaries

Continued from page 36

be an adoptive family available in order to terminate parental rights, a remand would be inappropriate. The appellate court rejected this argument because of the special role of a child's attorney in the dependency system. The child's attorney is "only part advocate" and also "part watchdog, and part referee." The duties of children's attorneys are set out in Welfare and Institutions Code section 317, which states that they must "advocate for the protection, safety, and physical and emotional well-being of the minor" through investigation and interviewing. The statutory requirement that a lawyer must take on an investigative role and report to the court on behalf of the child is unusual. "It is the minor's counsel who functions closest to a quasi-judicial capacity. The minor's counsel's role is reminiscent of the court's own role in a so-called inquisitorial justice system, where judges rely on experts and investigators who are *not* chosen by the parties." The Legislature has crafted the duties of a child's attorney to come closer to being an "arm of the court" than a social service agency. The child's attorney has the important task of determining the particular position that best accords with the child's interests. Also, critical to this case, the child's attorney's investigative role extends to appellate counsel.

The appellate court stated that when the appellate counsel's position changes from that of the trial counsel, that, in and of itself, is nowhere close to establishing grounds for reversal. In this case, the evidence warrants a concrete reason for a change in position. If the child's trial attorney had apprised the juvenile court of the grandfather's stated preference for legal guardianship over adoption, the judgment may have been different. Although it is not the appellate court's responsibility to determine facts, there exists a *need* in juvenile dependency cases to take into account postjudgment developments. Recognizing the dangers of either termination or nontermination of parental rights, more information must be provided than a statement in a brief. The appellate court indicated that information developed by the child's appellate attorney should be submitted pursuant to rule 23 of the California Rules of Court, which by cross-reference to rule 41 requires "affidavits or other evidence."

The appellate court stated that, on remand, the evidentiary hearing would in effect be a retrial of the section 366.26 hearing. The appellate attorney would therefore not become a star witness, and her declaration would become an offer of proof. The appellate court noted that this is a rare, close case that, on balance, tips in favor of reversal.

In re Nada R. **(2001) 89 Cal.App.4th 1166 [108 Cal.Rptr.2d 493]. Court of Appeal, Fourth District, Division 3.**

The juvenile court declared two children dependents of the court under Welfare and Institutions Code section 300 and placed the children in the custody of their mother. The mother, a U.S. citizen, and the father, a Saudi Arabian citizen, had their first daughter in California in 1989. Then the father moved back to Saudi Arabia to finish his college degree, and the mother and child joined him in 1992. A second daughter was born in 1993. In 1995, the mother moved back to Orange County, and the children remained in the custody of their father. In 2000, the father took the children to Florida and the mother joined them. There, the father began punching the oldest child and was arrested. The mother returned to Orange County with the children and filed a restraining order. The Orange County Social Services Agency (SSA) was alerted by the petition, and the children were taken into custody and later released to their mother's care. Prior to the initial hearing, both children stated that they were afraid of their father and that he drank daily. The oldest child also admitted that in Saudi Arabia she was sexually abused by her father's driver, her uncle's driver, and her teenage cousin. The younger child also said that her father had given her a gun to hold when she was five years old. The court denied the father's motion challenging jurisdiction and his request to have telephonic witnesses from Saudi Arabia. After hearing all the evidence, the court sustained the allegations in the petition and declared the children dependents. A six-month review hearing was set, but prior to that, the father appealed the decision of the juvenile court. He claimed that: (1) the juvenile court lacked subject matter jurisdiction, (2) certain evidentiary rulings deprived him of due process, (3) there was insufficient evidence to support the allegation that he failed to protect the oldest child from sexual abuse, (4) the court improperly denied him reunification services, and (5) he was entitled to attorney fees.

The Court of Appeal affirmed the decisions of the juvenile court, but remanded to the juvenile court to determine if that court could continue jurisdiction without communicating with the Saudi Arabian court. The appellate court determined that there was, in fact, enough evidence for the court to initiate emergency jurisdiction over the two children because the father had a drinking problem and drove the children often, and he had two prior arrests for physical altercations with the mother. Although emergency jurisdiction is limited and short, a court may exercise jurisdiction after the plenary hearing. In this case, the risk of harm is ongoing and the court can sustain jurisdiction to prevent harm.

The father also argued that the juvenile court failed to communicate with the Saudi Arabian court. The record was unclear on this allegation. Because

Continued on page 38

Dependency Case Summaries

Continued from page 37

the appellate court could not assess if the Saudi Arabian custody decree was enforceable under Family Code section 3424(d), the case was remanded to the juvenile court. The juvenile court's order will be considered temporary until a final determination of jurisdiction is made. The father argued that he was deprived of due process because the juvenile court refused his request to have telephonic testimony, and also refused to allow testimony from an expert in Islamic matrimonial law. The appellate court noted that the juvenile court questioned the reliability of telephonic testimony and that the father could have produced the witnesses or used some other remedy to have live testimony. The juvenile court did not permit the expert to testify because there was a lack of notice that would cause a continuance, and the expert had no specific knowledge of the situation. The appellate court did not find it necessary to assess the juvenile court's decision.

The father contended that there was insufficient evidence to sustain the allegation that he failed to protect the oldest child from sexual abuse. The appellate court reviewed the record in the light most favorable to the findings of the juvenile court. The juvenile court was entitled to believe the child's testimony about her suffering sexual abuse. The child testified that she frequently suffered sexual abuse by her cousin and family driver, and that upon telling her father, he did nothing. After assessing all the evidence, the court as the trier of fact found the child's testimony compelling.

The appellate court also rejected the father's contention that he was entitled to reunification services. The juvenile court denied reunification services without setting a Welfare and Institutions Code section 366.26 hearing. Therefore, the father could have appealed immediately. A juvenile court's decision to deny reunification services does not have to be supported with substantial evidence. The appropriate standard of review is the abuse of discretion test, and the appellate court determined that there was no abuse of discretion on the part of the juvenile court. The father could have requested reunification services, but did not. The father also claimed ineffective assistance of counsel because his attorney failed to object to the denial of reunification services. The appellate court found that the father had failed to show that the juvenile court would have ordered reunification services had the attorney objected at the disposition hearing.

The appellate court also rejected the father's claim for attorney fees under Government Code section 800. This code section applies to administrative hearings and has not been extended to appeals from superior court judgments. The appellate court also rejected mother's claim for attorney fees under rule 56.4 of the California Rules of Court and under Family Code section 3452. According to the appellate court, the father's appeal was not frivolous, as the mother had contended. In conclusion, the appellate court affirmed the judgment of the juvenile court except for the determination of jurisdiction and remanded the case to determine compliance with Family Code section 3424(d).

***Amy L. Pack v. Kings County Department of Human Services* (2001) 89 Cal.App.4th 821 [107 Cal.Rptr.2d 594] Court of Appeal, Fifth District.**

The juvenile court denied a petition for disclosure of juvenile court records under Welfare and Institutions Code section 827(a)(2). A child died while in the care of a foster mother. Thereafter, the publisher of the *Visalia Times Delta* petitioned the court for disclosure of the child's court files. This petition was denied. The publisher then filed a request for reconsideration. Also, the publishers of the *Fresno Bee* filed a similar petition, under Welfare and Institutions Code section 827(e) and rule 1423(a) of the California Rules of Court, requesting access to the child's court files. A hearing was held on both press petitions, and the juvenile court denied the California Department of Social Services' request to file an opposition under seal. At the hearing, the child's parents, the Kings County Human Services Agency (HSA), and the child's Court Appointed Special Advocate orally objected to the disclosure of the child's records. The juvenile court denied both press petitions, concluding that the release of any information from the child's files "would be detrimental to the safety, protection, physical, or emotional well-being of another child who is directly or indirectly connected to the juvenile case." The two newspapers appealed.

The Court of Appeal affirmed the decision of the juvenile court to not permit any information from the deceased child's file to be released. The appellate court held that: (1) a redaction from the records pertaining to the deceased child, of information about another living child, is not the sole statutory means by which the living child's interests may be protected; (2) a juvenile court's finding that the release of information would be detrimental to the safety, protection, or physical or emotional well-being of a living child is sufficient to justify withholding some or all of the information concerning the deceased child, and this decision implies that the juvenile court found that a redaction would be insufficient; (3) the appropriate standard of review is the substantial evidence standard; and (4) the juvenile court's decision to refuse the release of any information about the deceased child is, in fact, supported by substantial evidence.

Continued on page 39

Dependency Case Summaries

Continued from page 38

The newspapers argued that a redaction is the only tool available to the juvenile court to protect the information and interest of any child other than the deceased child, citing Welfare and Institutions Code section 827(a)(2), which provides in pertinent part that "any information relating to another child or which could identify another child, except for information about the deceased, shall be redacted from the juvenile case prior to release, unless a specific order is made by the juvenile court to the contrary." This subdivision also states, however, that the juvenile court may issue an order prohibiting or limiting access to the juvenile case file of a deceased child upon a showing that the release is detrimental to the safety, protection, or physical or emotional well-being of another child who is directly or indirectly connected to the case. Section 827(a)(2) does provide an inroad into the barrier of confidentiality that protects juvenile court records, and the Legislature has authorized departures from the philosophy that juvenile court records should be absolutely confidential. The Legislature has decided that considerations favoring public view, government accountability, and reform, trump considerations favoring confidentiality. Nevertheless, section 827(a)(7) contains two exceptions to disclosure: redaction and a limitation or prohibition of access to all or part of a case file when access is shown to be detrimental to another child. The appellate court disagreed with the newspapers' interpretation that the only remedy for protecting another child is redaction.

The newspapers also argued that certain specific findings are required when the press is denied access to otherwise public information. The appellate court rejected this argument because (1) the information the newspapers sought was not public and there is no unfettered access to juvenile court proceedings; (2) unlike other statutes that may have no identification of findings, section 827(a)(2) does state that a finding of harm to another child may authorize complete or partial nondisclosure; (3) the statute's language [upon a showing that the release is detrimental to the safety, protection, or physical or emotional well-being of another child] describes a concrete circumstance and that provides the appellate court with a point on which to focus its evaluation; and (4) the juvenile court, by withholding all of the deceased child's files, implicitly determined that a redaction of any information about the living child would not protect his or her interests.

One newspaper argued that the abuse of discretion review is not appropriate for review under section 827(a)(2) because (1) the interpretation of the statute is a question of law, (2) there were no disputed facts raised in the juvenile court, and (3) the press petition presented First Amendment issues. The appellate court agreed that the interpretation of the statute was a question of law. The appellate court concluded that the substantial evidence standard of review is appropriate under section 827(a)(2) because the factual conclusions are centered upon evidentiary proof, supported by record evidence. The appellate court found that the decision-making process under section 827(a)(2) is analogous to the decision-making process used to determine if a child is described under Welfare and Institutions Code section 300 as a dependent child or if reunification services should be provided to the parents. For section 827(a)(2) purposes, there must be a showing of demonstrative evidence that the release of information would be detrimental to another child. The appellate court noted that the substantial evidence standard is consistent with the presumption of disclosure inherent in subdivision(a)(2), and it furthers the Legislature's intent to promote governmental accountability and reform.

In this case, the juvenile court did not err by refusing to grant the newspapers' petitions for disclosure of the deceased child's records. The appellate court stated, "The contents of the relevant records amply justify a conclusion that release of any part of them would be highly detrimental to the well-being of another child." The linking of the two children in the dependency matter makes it impossible to disclose information relating to the deceased child without disclosing the identity of or prejudicial information about the other child. In drafting the section 827(a)(2), the Legislature concluded that the presumption in favor of disclosure should yield when it might result in the harm of another child. The appellate court recognized the frustration of the newspapers with being told they could not have access to the records while being given no explanation of why the evidence supported the juvenile court's order. "We can only respond by pointing out 'because we said so' is about all that can be said in most cases arising out of subdivision (a)(2," the appellate court stated in affirming the decision of the juvenile court to deny the newspapers' petitions for disclosure of the deceased child's records.

Continued on page 40

Dependency Case Summaries

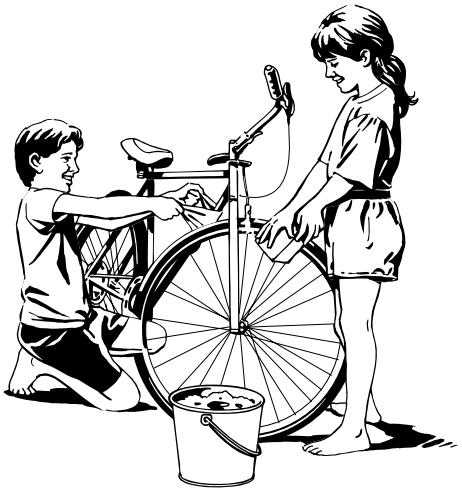
Continued from page 39

In re William G., Jr. **(2001) 89 Cal.App.4th 423 [107 Cal.Rptr.2d 436] Court of Appeal, Third District.**

The juvenile court terminated a father's parental rights under Welfare and Institutions Code section 366.26. The Department of Health and Human Services filed a petition for a one-and-a-half-year-old child because the mother had a substance abuse problem and the home was unsafe and unsanitary. The police were called to the home on an unsubstantiated report that someone was selling drugs to children. The mother informed police that it probably was the child's father and that he was a methamphetamine and marijuana user. The father had many criminal convictions for burglary, DUI, assault, and possession of narcotics. Attempts were made to locate the father to offer him services, and notice of the detention hearing was sent to the father's address. He did not appear, and the mother speculated that he was ambivalent because of a pending warrant for his arrest.

The father also did not attend the jurisdictional hearing in which reunification services were denied to him. The father did not appear for the six-month review hearing either and court set a section 366.26 hearing. The father did appear for the termination of parental rights hearing and informed the court that he was of Cherokee heritage. The juvenile court continued the matter to assure compliance with the Indian Child Welfare Act (ICWA). The father was appointed counsel and also requested a visitation assessment. This request was denied due to the absence of a section 388 modification petition. The Cherokee Nation filed an intervention notice and determined the child was an Indian child. The father's attorney argued that there was no evidence beyond a reasonable doubt that termination should occur and that an assessment had not occurred in compliance with ICWA. An addendum was added to the social worker's report, which contained an Indian child welfare expert evaluation. The expert concluded that the child was not safe with either parent. The juvenile court terminated the father's parental rights. The father appealed, contending that the court was required to provide reunification services to him once the child was determined to be an Indian child. The father did not contend that there was inadequate notice.

The Court of Appeal, in this partially published opinion, affirmed the decision of the juvenile court. The father did not avail himself of the opportunities to appear at earlier hearings. The father argued that even if he did not appear for hearings throughout the year, he was entitled to reunification services once he appeared. ICWA requires that active efforts be made to provide services, but not whenever the parent becomes available. The Department of Health and Human Services' attempts to notify the father of upcoming hearings satisfy this requirement, and the father chose not to participate and avail himself of this process. The child's Indian heritage was not known to the court and the other participants in the case until after the reunification period had ended. The juvenile court required compliance with ICWA upon learning of the child's heritage and the father failed to show a violation of this act. Therefore, the appellate court affirmed the decision of the juvenile court.



In re John S. **(2001) 88 Cal.App.4th 1140 [106 Cal.Rptr.2d 476]. Court of Appeal, Third District.**

The juvenile court adjudged a child a dependent and adopted a reunification plan. The Department of Health and Human Services (DHHS) detained the child based on allegations that his stepfather sexually abused him, his mother failed to protect him from abuse, and he suffered from emotional trauma. The petition referred to the child's father only as a registered sex offender. At the detention hearing, the juvenile court granted the father supervised visitation. At the jurisdictional hearing, the court interpreted Welfare and Institutions Code section 355.1(d) to provide that the father's status as a registered sex offender was prima facie evidence supporting jurisdiction whether or not he was the custodial parent. The father presented no evidence to rebut the presumption of jurisdiction thus created. The juvenile court sustained the petition. At the dispositional hearing, the court found that the child would benefit from reunification with the father and adopted a reunification plan with visitation. The father appealed the juvenile court's jurisdictional ruling.

The Court of Appeal affirmed the decision of the juvenile court. The father argued that the section 355.1(d) presumption should apply only to custodial parents or caregivers. He further argued that, without the support of that presumption, substantial evidence did not support the juvenile court's jurisdictional finding. Section 355.1(d) states in relevant part: "Where the court finds that either a parent, a guardian, or any other person who resides with, or has the care or custody of, a minor who is currently the subject of a petition filed under Section 300 … is required, as the

Continued on page 41

Dependency Case Summaries

Continued from page 40

result of a felony conviction, to register as a sex offender … , that finding shall be prima facie evidence" to support jurisdiction. The appellate court was called upon to determine whether the phrase "who resides with, or has the care or custody of" modifies only "any other person" or "a parent" and "a guardian" as well. The court concluded that the language of the statute was ambiguous. It therefore sought the purpose of the statute to illuminate these words. Section 1 of the bill adding section 355.1(d) declared that the act sought to protect dependent children from the risks associated with contact with a parent or caregiver who has committed a sex crime by ensuring that the juvenile court consider that information. In light of this protective purpose, the appellate court felt constrained to read the statutory language so that it would have as broad an application as possible. Thus, it determined that the phrase "who resides with, or has the custody or care of" modifies only "any other person." The statutory presumption applies to both custodial and noncustodial parents or guardians of children subject to section 300 petitions. Here, the presumption was properly applied to the father even though he did not live with, or have care or custody of, the child. The father remained free to present to the juvenile court evidence to rebut the presumption, but did not. Also, the evidence showed that there were significant periods of time during the child's extended visits when the father had resided with or had care or custody of the child. Given this evidence, even under the narrow interpretation of the statute suggested by the father, he would not have prevailed because the unsupervised extended visits with his child would have triggered the presumption as well. Therefore, the appellate court affirmed the decision of the juvenile court.

***County of Ventura v. Ramon Gonzales* (2001) 88 Cal.App.4th 1120 [106 Cal.Rptr.2d 461]. Court of Appeal, Second District, Division 6.**

The trial court ordered Ramon Gonzales to pay child support after his parental rights were terminated under Welfare and Institutions Code section 366.26. Gonzales is the biological father of a child who received welfare benefits from Ventura County. The county filed a complaint on the child's behalf to establish Gonzales's paternity and obtain child support. Meanwhile, the child was declared a dependent and removed from his mother's custody. After a section 366.26 hearing, the juvenile court terminated both Gonzales's and the mother's parental rights. The county moved for judgment in the paternity action. The parties stipulated to all issues except whether Gonzales would be obligated to pay child support after the date of termination of his parental rights. The trial court ruled that termination of parental rights did not eliminate the obligation to pay child support. It entered a judgment establishing Gonzales's paternity and ordering child support. Gonzales appealed.

The Court of Appeal modified and affirmed the trial court's judgment. Considering the concept of parental rights, the appellate court determined them to be coextensive with parental responsibilities. The court searched California statutes and found several provisions that treat parental rights and responsibilities equally. Especially relevant was Family Code section 232.6, which provided the legal means to free a dependent child from parental custody and control before the enactment of section 366.26. Section 232.6 equated the termination of parental rights with the termination of parental responsibilities. The appellate court distinguished Family Code section 8617, which provides that the birth parents of an adopted child are relieved of their parental responsibilities from the time of adoption. That section applies generally to all adoptions, not only to those that follow a termination of parental rights. The appellate court ruled that the more specific termination provision, section 366.26, governs both parental rights and responsibilities in the case of dependent children. It therefore modified the trial court order of child support to terminate that obligation on the same day that Gonzales's parental rights terminated.

***In re Dennis H.* (2001) 88 Cal.App.4th 94 [105 Cal.Rptr.2d 705]. Court of Appeal, First District, Division 3.**

The juvenile court ordered three children removed from their father's custody and denied reunification services. The county had filed a dependency petition alleging that the children came under the court's jurisdiction pursuant to Welfare and Institutions Code section 300, subdivisions (b) (failure to protect), (d) (sexual abuse), and (j) (abuse of sibling). The petition claimed that the father, a registered serious sex offender, had sexually abused his daughter and beaten his sons. At the detention hearing, the court appointed separate counsel to represent the father and the children. It also appointed the district attorney, at the request of the Department of Social Services, to represent the interests of the state. At the jurisdictional hearing, the juvenile court viewed videotaped interviews of the children, heard testimony from the father and other adults, and reviewed medical reports. Based on this evidence, the juvenile court denied reunification services. The father appealed the juvenile court ruling on the grounds that: (1) the court erred in appointing the district attorney to participate directly in the case, and (2) the father's trial counsel rendered ineffective assis-

Continued on page 42

Dependency Case Summaries

Continued from page 41

tance by not objecting to the district attorney's participation.

The Court of Appeal affirmed the decision of the juvenile court. The appellate court first held that the father had waived his right to claim error based on the district attorney's participation by failing to raise an objection in the juvenile court. The appellate court did, however, address whether the father's counsel rendered ineffective assistance by failing to raise that objection. The court considered whether the objection would have been well founded, whether any reasonably competent attorney would have objected, and whether the failure to object had a determinative effect on the outcome of the case.

The district attorney may not prosecute civil actions absent express statutory authorization. No statute explicitly authorizes the district attorney to appear in dependency proceedings on behalf of the undefined interests of the state, though sections 317 and 318.5 of the Welfare and Institutions Code do allow the juvenile court to appoint the district attorney to represent either the child or the petitioner. In this case, the appellate court held that neither section applied because the child and the petitioning agency were represented by counsel throughout the proceedings. The appellate court also held that section 681(b) of the Welfare and Institutions Code, which authorizes the district attorney to represent a child in the interest of the state when the parent has been charged in a pending criminal prosecution, did not apply here. The child already had representation, and though the father had been arrested for child abuse, no charges had been filed against him at the time of the dependency hearings. Because of the absence of statutory authorization and the potential unfairness of marshaling multiple state resources against the parent, the appellate court held that the juvenile court improperly allowed the district attorney to appear in the proceedings. The objection would have been well founded.

The appellate court rejected the father's contention that any reasonably competent attorney would have objected to the district attorney's participation. Because the issue was one of first impression and no statute expressly prohibited the district attorney's participation, the issue was not clear-cut. In addition, the appellate court held that the father had failed to demonstrate a reasonable probability that the outcome of the case would have been different had his counsel objected. Though the district attorney did play an active role in the proceedings, the father did not show that the lawyers representing the children, the county, or the mother would have done a less effective job examining the live witnesses. Furthermore, the juvenile court also relied on videotaped testimony, medical reports, and the father's previous criminal record. The district attorney's participation "did not add to or subtract from the universe of evidence presented to the juvenile court; it merely altered the manner of presentation." The appellate court therefore held that the father had not shown it to be reasonably probable that the exclusion of the district attorney would have changed the outcome of the proceeding.

***Los Angeles County Dept. of Children and Family Services v. Superior Court* (2001) 87 Cal.App.4th 1161 [105 Cal.Rptr.2d 254]. Court of Appeal, Second District, Division 3.**

The juvenile court ordered that a four-year-old and nine-month-old be placed with their maternal great-uncle. Because the children's mother had a long history of substance abuse, arrests, and convictions and also used rock cocaine during the younger child's pregnancy, she endangered the children's health, safety, and well-being. The children were detained, and the juvenile court ordered that the Los Angeles County Department of Children and Family Services (department) investigate the children's maternal great-uncle and his wife for possible placement in their home. The great-uncle disclosed that he has had 16 adult convictions for drug-related offenses, a history of drug abuse, and had engaged in gang-related activities. Although the department objected to the children's placement in his home, the court ordered release to the great-uncle's wife, specifying that the great-uncle could have only monitored contact and not baby-sit the children. The juvenile court noted that the great-uncle and his wife were caring for the children and were forthright about their situation. The department filed an application for rehearing on the ground that the placement violated Welfare and Institutions Code section 361.4(d)(2)'s prescription against placing a child in a home where an adult resides who has a criminal record for something other than a minor traffic violation. The court ordered that the children be released to the great-uncle's wife. The department then filed an instant writ of mandate. The appellate court directed the juvenile court to change its placement order. Thereafter, the juvenile court ordered the great-uncle to move out and asked the department to verify this. After this verification, the department later discovered that the great-uncle had been spending most of his time in the home. The appellate court issued an alternative writ of mandate directing the juvenile court to remove the children from the home and/or bar any contact between the children and the great-uncle. The juvenile court granted the great-uncle's wife legal guardianship over the department's objection and refrained from terminating jurisdiction.

Continued on page 43

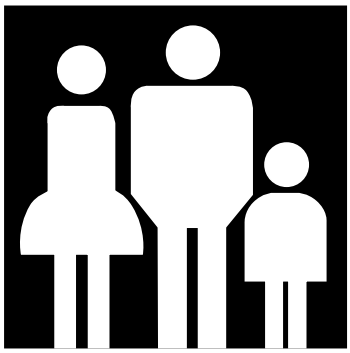
Dependency Case Summaries

Continued from page 42

The Court of Appeal issued a writ of mandate directing the juvenile court to vacate its orders permitting the children to live in a home where the great-uncle resides or which gives him significant contact with the children, as well as the order granting the great-uncle's wife guardianship over the children. The appellate court found that the juvenile court exceeded its authority by making orders contrary to section 361.4. Section 361.4(d)(2) provides that after a fingerprint check of persons living in a potential placement for dependent children, if any of them have been convicted of a crime other than a minor traffic violation, the children must not be placed in the home. The statute is mandatory and the juvenile court has no discretion to avoid this prohibition of placement. Also, the appellate court noted that a waiver of disqualification may only be granted or denied by the director of a department of social services. In this case, the department did not seek a waiver and justly opposed the children's placement in the great-uncle and his wife's home. The great-uncle's criminal record automatically disqualified his home from serving as a placement for the children. The juvenile court had no statutory authority to place the children in this home. The appellate court noted that the best interest of the children does not supplant the prohibition in section 361.4. Despite Welfare and Institutions Code section 319, which permits the juvenile court to place a child in a suitable home with a relative, a person described in section 361.4(d)(2) would make this environment unsuitable.

***In re Sara D.* (2001) 87 Cal.App.4th 661 [104 Cal.Rptr.2d 909]. Court of Appeal, Fifth District.**

The juvenile court appointed a guardian ad litem for a mother in a dependency proceeding. A Welfare and Institutions Code section 300 petition was filed alleging that the child's mother: (1) was unable to control the child's extreme behavior in a home that was considered a health and safety hazard, and (2) engaged in conduct likely to inflict serious emotional damage on the child. On the date of the contested jurisdictional hearing, the court relieved the mother's counsel and continued the hearing. The mother appeared at the continued hearing with new counsel; there, the mother's therapist testified that the mother had features of a borderline personality defect. The matter was continued, and before any testimony was presented, the attorney requested to speak with the judge in chambers. The mother's appointed attorney requested that he be relieved from the case and the court appoint a guardian ad litem for the mother. The juvenile court determined that the appointment of a guardian ad litem to assist the mother's attorney would be appropriate because it had already relieved one counsel for the mother, it was in the middle of a jurisdictional hearing, and it would be beneficial to the mother to have a guardian ad litem to explain the proceedings. The court referred the matter for the appointment of a guardian ad litem, and at the next continued hearing, both the mother's attorney and the newly appointed guardian ad litem were present. The jurisdictional issues were resolved, and an agreement was established by the attorneys and guardian ad litem. The court found it had jurisdiction and set a dispositional hearing. After the dispositional hearing, the court awarded the child's father legal and physical custody, granted the mother supervised visitation, and dismissed the petition. The mother appealed the appointment of the guardian ad litem.



The Court of Appeal reversed the appointment of the guardian ad litem and the juvenile court's jurisdictional and dispositional orders, holding that a parent's right to due process requires an informal hearing and an opportunity to be heard. The appellate court determined that the appropriate standard for determining incompetency on a motion for appointment of a guardian ad litem is set by either Probate Code section 1801 or Penal Code section 1367. (See *In re Christina B.* (1993) 19 Cal.App.4th 1441). The appellate court determined that a parent is entitled to due process before a court can appoint a guardian ad litem. If the parent's attorney does not consult with the parent before requesting the appointment of a guardian ad litem and the court directs appointment, the court has "dramatically changed the parent's role in the proceeding by transferring the direction and control of the litigation from the parent to the guardian ad litem." The interest of a parent in the care, custody, and management of his or her children is a basic civil right entitling the parent to due process. Before the state may deprive a parent of this right, the parent must be given a hearing and an opportunity to be heard. The appellate court made an analogy to custody proceedings and also noted the breadth of due process protections provided to parents throughout the section 300 provisions. The court rejected the argument that due process was protected because the mother's attorney participated in the decision to appoint the guardian ad litem. The appellate court also rejected the argument

Continued on page 44

Dependency Case Summaries
Continued from page 43

that the parent's due process rights were satisfied because the appointment of a guardian ad litem can be made on an ex parte petition. Ex parte applications require notice to all parties. In this case the decision to appoint the guardian ad litem was made outside the parent's presence even though she arguably could have protested the appointment in court.

Due process requires the balancing of: (1) the private interest affected by the official action; (2) the risk of erroneous deprivation of the interest through procedure; (3) the interest in informing the individuals of the nature, grounds, and consequences of the action and allowing them an opportunity to be heard; and (4) the governmental interest, including the functional and administrative burdens that the requirement would entail. The appellate court decided that a formal hearing and noticed motion were not necessary. The court or the mother's attorney should have explained to her the purpose of a guardian ad litem and why the attorney believed the appointment would be appropriate. The mother should have been given an opportunity to respond. This procedure does not impose significant additional burdens on the juvenile court. In some cases, testimony from other witnesses may be relevant on the issue of competency. The court should make an inquiry sufficient to determine if the parent is competent or not. The court should assess whether the parent understands the nature of the proceedings and can assist the attorney in protecting his or her rights. The juvenile court in this case violated the mother's due process rights by not giving her a hearing or an opportunity to be heard.

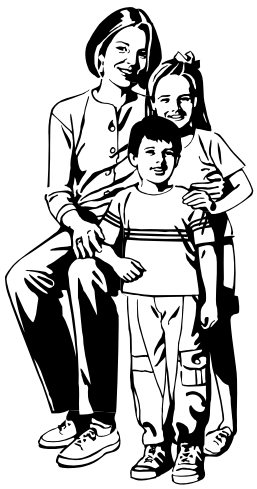
This denial of due process requires a reversal because the error was not harmless beyond a reasonable doubt. The appointment of the guardian ad litem affected the conduct of the jurisdictional hearing. The mother's attorney, after the appointment of the guardian ad litem, did not offer additional testimony and agreed to certain amendments to the petition. Also, the appellate court determined that there was a lack of substantial evidence to support the decision to appoint a guardian ad litem. The appellate court determined that the juvenile court relied on conclusory statements by the mother's attorney and on social studies that were not necessarily relevant to the determination of competency. The evidence did not support the determination that the mother did not understand the nature of the proceedings or was unable to assist counsel in protecting her own interests. The appellate court reversed the juvenile court's order appointing the guardian ad litem, as well as the jurisdictional and dispositional orders, and remanded the matter.

Other Cases Involving Children

CASES PUBLISHED FROM MARCH 1, 2001, TO JULY 5, 2001

***Punsly v. Ho* (2001) 87 Cal.App.4th 1099 [105 Cal.Rptr.2d 139]. Court of Appeal, Fourth District, Division 1.**

The trial court granted a child's grandparents visitation under Family Code section 3102. A mother and father were divorced when their daughter was two years old. They shared joint legal and physical custody, with the mother having primary physical custody. Approximately four years later the father was diagnosed with bone cancer and died. Following the father's death, his parents continued to visit the child. The grandparents sought to arrange a visitation schedule. The mother objected to their proposed schedule and offered limited visits. The grandparents rejected the mother's limited schedule and petitioned the court under Family Code section 3102. The court ordered visits once every other month, a weekly telephone call, and ancillary orders. The mother appealed the visitation order, contending that section 3102 was unconstitutionally applied in this case.



The Court of Appeal held that the section 3102 application unduly infringed on the mother's fundamental parental rights, and reversed the decision of the trial court. The appellate court rejected the grandparents' argument that it did not have the discretion to hear the constitutionality claim. Because the mother in this case did not voluntarily agree to the court's interference with her parental rights, and also because of the importance of the question about the constitutionality of visitation statutes, the appellate court had the discretion to hear the case. Section 3102 states in pertinent part that if either parent of an unemancipated child is deceased, the children, siblings,

Continued on page 45

Other Cases Involving Children
Continued from page 44

parents, and grandparents of the deceased parent may be granted reasonable visitation with the child during the child's minority upon a finding that it is in the best interest of the child. The mother appealed the constitutionality of section 3102 as applied and did not challenge the statute facially. The U.S. Supreme Court's decision in *Troxel v. Granville* (2000) 530 U.S. 57 [120 S.Ct. 2054] guided the appellate court. In *Troxel*, the Supreme Court held that a Washington statute that authorized nonparental visitation with a child was unconstitutionally applied. The factors that the Supreme Court addressed were: (1) there was no allegation that the mother was an unfit parent; (2) the trial court gave no special weight to the mother's determination of the best interest of the child; and (3) the trial court did not give any weight to the fact that the mother did agree to allow some visitation between the grandparents and the child.

The grandparents in this case argued that section 3102 is not as "breathtakingly broad" as the Washington statute had been described. The appellate court rejected this argument and determined that like the Washington statute, section 3102 "authorizes a court to grant such visitation to a child's grandparents solely upon finding the best interests of the child." In this case, there was no allegation that the mother was unfit to raise her child and the parent-child relationship was loving and supportive. Before a court may intervene, the parent must have the opportunity to negotiate a visitation plan. In this case, the mother did propose her own visitation schedule. The schedule attempted to minimize the mother's driving from San Diego to Los Angeles, where the grandparents lived, because they very rarely made the trip down south.

The appellate court determined that the mother's constitutional rights as a parent were implicated when the section 3102 petition was filed. The court interfered despite her objections and appointed the child independent counsel. The court failed to make the proper presumptions regarding visitation as it was called upon to determine the best interest of the child. There is a presumption that fit parents act in the best interest of their children. The appellate court noted that the fitness of the mother was unquestioned. The trial court dismissed the mother's concerns that the grandparents used poor language around her daughter, were insensitive to the child's needs, and did not accept her biracial background. The trial court also recognized that there was no strong bond between the grandparents and the child. The appellate court held that the mother's fundamental due process rights as a fit custodial parent were violated. The appellate court reversed the decision of the trial court and directed it to vacate the grandparents' visitation order request and deny such request. The trial court was required stay the visitation order immediately, and the grandparents were directed to pay the mother's costs on appeal.

In Memoriam

Julia Lee worked in the Trial Court Services Division for many years and, in the three years before her passing, was part of the Statewide Office of Family Court Services and then the Center for Families, Children & the Courts.

Julia had a strong will that characterized her attitude toward life. She was honest, forthright, and honored her word. She made the best of every challenge that came her way whether it involved work, personal and family issues, or her fight to regain her health. Friendly, caring, witty, and respected, Julia lost her long battle with cancer earlier this year but was determined and courageous to the end. We honor her memory and her courage.